
***DETENTION AND
CORRECTIONS
CASELAW CATALOG***

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SECTION 8: CLASSIFICATION AND SEPARATION

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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.

1964

U.S. District Court
PRETRIAL
DETAINEES
Tyler v. Harris, 226 F.Supp. 852 (W.D. Mo. 1964). Unconvicted persons can be kept with convicted persons in federal medical centers, but they may not be subjected to involuntary servitude. (Medical Center For Federal Prisoners, Springfield, Missouri)

1966

U.S. District Court
MENTALLY ILL
Johnston v. Ciccone, 260 F.Supp. 553 (W.D. Mo. 1966). Pretrial confinement with convicted persons in the U.S. Medical Center for Federal Prisoners is not unconstitutional for persons found to be mentally ill. (United States Medical Center for Federal Prisoners)

1968

U.S. Supreme Court
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). 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
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)

U.S. District Court
RACIAL
DISCRIMINATION
TRUSTY
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.

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.

Elimination of a trusty system under which trustees had unsupervised power over other inmates was essential to the establishment of prison system meeting constitutional standards. (Arkansas Prison System)

1971

U.S. District Court
ISOLATION

Conklin v. Hancock, 334 F.Supp. 1119 (D. N.H. 1971). Inmate in isolation should have all privileges of other inmates except those that involve mixing with the general population. 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, New Hampshire)

U.S. District Court
CLASSIFICATION

Jones v. Wittenberg, 330 F.Supp. 707 (N.D. Oh. 1971), aff'd, 456 F.2d 854 (6th Cir. 1972). Court orders a classification system to be implemented on admission to the jail. (Lucas County Jail, Ohio)

1972

U.S. District Court
JUVENILES

Baker v. Hamilton, 345 F.Supp. 345 (W.D. Ky. 1972). Placement of juveniles (pretrial and sentenced) in an adult facility without a hearing and without separating them from adults is unconstitutional. (Jefferson County Jail, Kentucky)

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
CLASSIFICATION

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

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)

1974

U.S. District Court
HOMOSEXUALS
ISOLATION

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. Segregation of inmates by race is unconstitutional. (Mecklenburg County Jail, North Carolina)

1975

U.S. District Court
PRETRIAL
DETAINEE
SPECIAL NEEDS

Alberti v. Sheriff of Harris Co., 406 F.Supp. 649 (S.D. Tex. 1975). No pretrial detainee shall be housed in the same cell or cellblock with any person who has been convicted and sentenced. Alcoholic and drug-dependent inmates shall be housed in an incarcerative environment specifically designed and equipped for the treatment of withdrawal problems. (Harris County Jail, Texas)

U.S. District Court
DUE PROCESS
MENTALLY ILL

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. Appeals Court
CLASSIFICATION
CRITERIA

Kelley v. Brewer, 525 F.2d 394 (8th Cir. 1975). Classification criteria must be rational and reasonable rather than arbitrary and capricious. (State Penitentiary, Fort Madison, Iowa)

U.S. Appeals Court
HOMOSEXUALS

McCray v. Sullivan, 509 F.2d 1332 (5th Cir. 1975), cert. denied, 423 U.S. 859. Homosexuals segregated as a suspect class is questionable. (Alabama State Penitentiary)

U.S. District Court
CLASSIFICATION

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

1976

U.S. District Court
PRETRIAL
DETAINEES

Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. V.I. 1976). Detainees are to be separated from convicted inmates in separate buildings if physically possible. (Golden Grove Adult Correctional Facility, Virgin Islands)

U.S. District Court
CLASSIFICATION

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

U.S. Supreme Court
DUE PROCESS
TRANSFER

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. District Court
PRETRIAL
DETAINEES

Mitchell v. Untreiner, 421 F.Supp. 886 (N.D. Fla. 1976). No pretrial detainee may be housed in the same cell with a convicted person. (Escambia County Jail, Pensacola, Florida)

U.S. District Court
PRETRIAL
DETAINEES

Moore v. Janing, 427 F.Supp. 567 (D. Neb. 1976). Housing of convicts and detainees together contributes to finding of unconstitutionality. Detainees may not be subjected to restrictions unrelated to securing appearance at trial and maintaining internal order and security. (Douglas County Jail, Nebraska)

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. (California State Prisons- San Quentin, Folsom, Soledad, Tracy)

1977

U.S. District Court
PRETRIAL
DETAINEES
JUVENILES
SPECIAL NEEDS

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. Screening officer shall inquire as to detainee's need for psychological or counseling care and shall report to the correctional staff. So far as practicable, pretrial detainees shall not be housed in the same cell with convicted persons. Juveniles may not be housed in the jail for longer than it takes to arrange to transfer them. There shall be a special housing unit for detainees who need it for psychiatric, psychological or other medical reasons. (Platte County Jail, Missouri)

U.S. District Court
PRETRIAL
DETAINEES

Anderson v. Redman, 429 F.Supp. 1105 (D. Del. 1977). Overcrowding is found to have caused a breakdown in prison classification system. Pretrial detainees are exempted from population limit based on "classification capacity" because detainees are not classified. However, design capacity is never to be exceeded. (Delaware Correctional Center)

U.S. District Court
CLASSIFICATION

Forts v. Malcolm, 426 F.Supp. 464 (S.D. N.Y. 1977). Summary judgment is granted requiring that every visit be a contact visit except where a security risk is revealed through an established classification system. (New York City Correctional Institute for Women)

U.S. Appeals Court
CLASSIFICATION

French v. Heyne, 547 F.2d 994 (7th Cir. 1977). Restriction on inmate money raising to finance educational programs must have a rational basis. Though not constitutionally required, classification must have a rational basis for providing vocational educational programs to long-term inmates but not to short-term inmates or inmates with degrees. Prior classification was not found sufficient. (Indiana State Reformatory)

U.S. District Court
CLASSIFICATION
JUVENILES

Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). Inmates shall be classified according to age and other factors. Juveniles will be housed in living areas separate from adults. (Jackson County Jail, Kansas City, Missouri)

U.S. District Court
CLASSIFICATION
CRITERIA

Laaman v. Helgemoe, 437 F.Supp. 269 (D. N.H. 1977). Reasonable, rational classification system is constitutionally required. (New Hampshire State Prison)

1978

U.S. Appeals Court
DUE PROCESS

Altizer v. Paderick, 569 F.2d 812 (4th Cir. 1978), cert. denied, 435 U.S. 1009 (1977). Inmates have no due process right to any particular job in an institution. No procedural due process is needed to transfer inmate from one job to another. (Virginia State Prison)

U.S. District Court
DUE PROCESS

Bono v. Saxbe, 450 F.Supp. 934 (E.D. Ill., 1978). Prisoners confined in the control unit of the Marion Federal Penitentiary brought an action challenging the conditions of their confinement. The district court held that: (1) prisoners did not have a fundamental liberty interest in remaining in the general prison population but did have an interest protected by due process as a result of the prison's own rules; (2) placement of prisoners in the control unit, which was done for preventative and not punitive reasons, could not

be based on the crime for which the prisoner was convicted or on the possibility of escape since every inmate in the Marion institution was a potential candidate for escape; (3) prisoners placed in the control unit were entitled to written notice of hearing, written reason, impartial decision making, and immediate and later periodic review; (4) prisoners were entitled to be told what affirmative actions they could take to expedite their release from the control unit, and (5) conditions of confinement in the control unit were not cruel and unusual punishment except for the use of closed-front cells. (Federal Penitentiary, Marion, Illinois)

U.S. District Court
PROTECTIVE
CUSTODY
DUE PROCESS

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
RACIAL
DISCRIMINATION

Mickens v. Winston, 462 F.Supp. 910 (E.D. Vir. 1978), aff'd, 609 F. 508. Racial segregation as a device to relieve tension and prevent incidents among inmates may be permissible as a temporary measure under extreme circumstances. It cannot be justified as a general practice. (Richmond City Jail, Virginia)

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
SEGREGATION

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

U.S. District Court
CLASSIFICATION
CRITERIA
SEPARATION

Doe v. Lally, 467 F.Supp. 1339 (D. Md., 1979). Inmates of a state diagnostic center brought a civil rights action seeking injunctive and declaratory relief. The district court held that: (1) where an original, individual plaintiff in inmates' civil rights class action was a proper representative of the class at the time of certification, intervenor plaintiff's subsequent escape from the correctional center did not require the decertification of class action; (2) because the plan submitted by prison officials failed to devise a model for classifying inmates on the basis of their age, length of sentence, nature of crime, and past offenses so as to avoid sending inmates to the state penitentiary in the first place if they were readily identifiable as inmates who belonged in prison camps, prison officials would be directed to consult with recognized experts to devise a more efficient classification procedure; and (3) state would be directed to implement its proposed procedures to prevent mixing between inmates of diagnostic center and inmates of the state penitentiary and to complete those measures within 60 days. (Maryland Reception, Diagnostic and Classification Center)

U.S. Appeals Court
RACIAL
DISCRIMINATION
CLASSIFICATION

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."

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

U.S. Appeals Court
CLASSIFICATION

McGruder v. Phelps, 608 F.2d 1023 (5th Cir. 1979). An inmate does not have a constitutional right to any particular classification. However, the state must meet the provisions of a previous settlement incorporated into an order which requires ninety day review of segregation classification. (State Penitentiary, Angola, Louisiana)

1980

State Supreme Court
SUICIDE

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

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. Appeals Court
CLASSIFICATION

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
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
PRETRIAL
DETAINEES
- Campbell v. Bergeron, 486 F.Supp. 1246 (M.D. La. 1980), aff'd, 654 F.2d 719 (5th Cir., 1981). Jail inmates have a right of personal safety when incarcerated. However, there is nothing inherent in a failure to separate sentenced and pretrial inmates which violates this right. (West Baton Rouge Parish Jail, Louisiana)
- U.S. District Court
LENGTH OF
SEGREGATION
- 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. District Court
CLASSIFICATION
- Garrett v. United States, 501 F.Supp. 337 (N.D. Ga. 1980). An ex-inmate of Atlanta Federal Penitentiary sues for injuries inflicted upon him while he was incarcerated. The district court held that where the prisoner who assaulted the plaintiff prisoner arrived at the federal penitentiary in Atlanta accompanied by a file showing that he had committed assault upon a correctional officer on three separate occasions, had assaulted another inmate, had murdered an inmate and threatened correctional officers, as well as engaged in fighting and possession of dangerous weapons, the government was negligent in failing to anticipate that he might harm another prisoner and in failing to provide closer supervision of him than was provided. He had been placed in a large area housing 500 to 600 prisoners in multi-tiered cells, manned by two to three guards.
- The court found that this negligence was proximate cause of prisoner's injuries so that he would be entitled to damages for loss of earnings, pain he suffered after the incident, and anxiety and mental distress. The legal standard for proximate cause requires the injuries to have been a foreseeable result to the alleged negligence; however, "foreseeability" does not require the anticipation of a particular injury to a particular person but only that anticipation of a general type or category of harm which in ordinary experience might be expected to flow from a particular type of negligence.
- Failure of the institutional staff to take the individual's prior record of attacks on inmates and guards into account when classifying him, which caused the individual to be placed in general population where he was able to attack plaintiff, was negligence giving rise to liability under the Federal Tort Claims Act. \$5040 was awarded. (Federal Penitentiary, Atlanta)
- U.S. District Court
SEGREGATION
- Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). An allegation that inmates in the Special Housing Unit are limited to one visit with a counselor per week fails to state a claim upon which relief can be granted. Allegations that mail directed from the inmates to the superintendent of the institution is lost or destroyed state a claim upon which relief can be granted. Allegations regarding the lack of access to the regular visiting room and to the visiting room vending machines for visitors to inmates in the Special Housing Unit fail to state a claim upon which relief can be granted. Allegations of limiting the number of personal books in the Special Housing Unit to five, or a poorly shelved library and an almost total lack of non-English books do not state a claim upon which relief can be granted. (Attica Correctional Facility, New York)
- U.S. District Court
CLASSIFICATION
CRITERIA
- Hluchan v. Fauver, 482 F.Supp. 1155 (D. N.J. 1980). In October 1979, the district court for New Jersey declared unconstitutional a state standard which denied eligibility for minimum custody status to inmates who had been convicted of more than one "sex offense." Guidelines were set forth in the opinion to help in revising the standard. Within the time allotted, the defendants submitted proposed revisions to the standard. The court first stated that the definition of "sex offense" by reference to specific section of the New Jersey Criminal Code was entirely proper. Furthermore, the court agreed with the categories from which the offenses included in the standard were selected: (1) minors; (2) violence or the threat of violence; or (3) the sale of prohibited sexual goods and services in the course of a business for profit.
- The court stated that the standard failed, however, because of the inclusion of certain phrases in the definition of "sex offense." One section, which provided for the

hiring out or employing of minors for mendicant or immoral purposes, the court found to be irrational. This section referred to the disposing "of the child for any mendicant or slandering business." The court pointed out that "mendicant" is defined as "practicing beggary" or "begging" and that wandering business is not necessarily concerned with sex or immorality. The court stated that if such terms were applied to the definition of "sex offenders," the classification would violate the equal protection clause of the fourteenth amendment. The court then discussed other sections of the proposed standard which listed criminal conduct constituting a "sex offense." The court found it impossible to determine the meanings of these paragraphs. The court also stated that defining sexual offenses by reference to specific sections of the New Jersey code would render the standard violative of the equal protection clause since the New Jersey code differs in structure from other state codes. The court thus found the proposed standard to be unconstitutional, but granted the commissioner thirty days to make revisions. (New Jersey Department of Corrections)

U.S. District Court
CLASSIFICATION

Morris v. Travisono, 499 F.Supp. 149 (D. R.I. 1980). The court held that: (1) prior consent judgment establishing regulations governing disciplinary, classification, and mail procedures at state prisons would not be vacated, either on basis of reversal or prior judgment upon which the consent judgment was allegedly based or on basis of claimed changes in factual circumstances; (2) evidence established that violations of such regulations occurred in the officials' failure to devise treatment and rehabilitation plan for inmate, in officials' failure to provide the prisoner with certain privileges due an inmate classified in category in which the prisoner was classified, and the officials' employment of inappropriate criteria in continuing to classify the prisoner in such category; and (3) prison officials' failure to enumerate more specific criteria than that contained in the prior consent judgment in order to evaluate the prisoner's classification status did not deny the prisoner due process of law. The use of segregation, per se, does not violate the eighth amendment even where the period of segregation for a particular inmate extends into years. (Adult Correctional Institution, Rhode Island)

U.S. Appeals Court
CLASSIFICATION

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

1981

U.S. Appeals Court
PRETRIAL
DETAINEE
DUE PROCESS

Villanueva v. George, 659 F.2d 851 (1981). A majority of the U.S. Court of Appeals for the Eighth Circuit, sitting en banc, ruled that the allegations of a pretrial detainee raised a legitimate factual issue as to the constitutionality of the conditions to which he was subjected during his pretrial confinement. The court found, therefore, that the trial judge should have presented the case to the jury rather than directed the verdict against the plaintiff. The circuit court found that the jury might have concluded that the conditions of confinement were punitive in nature. Since the due process clause prohibits the punishment of persons prior to a judgment of conviction, plaintiff Robert Villanueva would have to persuade the jury that punitive conditions existed during his pretrial detention. According to the decision:

The question of whether there is sufficient evidence of the defendants' punitive intent is one for the jury. Moreover, the jury may 'infer that the purpose was punishment from the fact that the condition either bore no reasonable relation to a legitimate goal or exceeded what was necessary for attaining such a goal...' Putnam v. Gerloff, 639 F.2d 415 at 420 (8th Cir. 1981). See also Bell v. Wolfish, 441 U.S. at 539.

There is evidence in this record from which the jury could have reasonably concluded that Villanueva's conditions of confinement were unnecessarily excessive and bore no reasonable relation to a legitimate governmental interest...We emphasize that our decision is not based solely on the fact that Villanueva was confined in a cell measuring six feet by six feet, see Rhodes v. Chapman, 29 CrL 3061 (1981). It is rather based upon the totality of the circumstances, including cell size, time spent in the cell, lack of opportunity for exercise or recreation, general sanitary conditions, and the fact that the appellant's past behavior demonstrated an ability to be confined under less restrictive conditions without incident.

In dicta the court suggests that the classification procedure which resulted in the plaintiff's being placed in segregation while awaiting trial was valid. The procedure took into account the nature of the crime charged and particularly whether the crime was violent or aggressive, the prisoner's desire to remain in a particular classification, the psychological state of the individual and other similar factors. (St. Louis County Adult Correctional Facility, Missouri)

1982

U.S. District Court
PRETRIAL
DETAINEE
SEGREGATION

Boudin v. Thomas, 543 F.Supp. 686 (S.D. N.Y. 1982). Administrative detention terminated and contact visits 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)

U.S. District Court
CLASSIFICATION

Dillon v. Director, Dept. of Corrections, 552 F.Supp. 30 (W.D. Vir. 1982). Director of state corrections agency not liable for negligent acts in local jails. Although he had a statutory duty to implement standards and goals for local correctional facilities, the court found that the Director of the Virginia Department of Corrections was not liable for isolated acts of negligence that occurred in local jails. The court held that since he had no direct control over city jail employees, he could not be held vicariously liable for their negligent acts.

The plaintiff had alleged that he was the victim of a sexual assault by an adult and two juveniles while incarcerated in the juvenile section of the Roanoke City Jail as a result of various officials' negligence. He was also suing the City of Roanoke, the sheriff, and several jail personnel. The director was dismissed from the suit. (Roanoke City Jail, Virginia)

U.S. District Court
CLASSIFICATION

Grubbs v. Bradley, 552 F.Supp. 1052 (M.D. Tenn. 1982). A classification system may be required. While there is no constitutional right to a classification system, where the absence of such a system substantially contributes to violence in the institution, such a system may be required. Here, the court notes that the classification system is virtually meaningless since cell and work and even institutional assignments are not really made on the basis of other than available space. The court finds that inmates do not have a right to participate in the classification decision since that is a matter of administrative discretion. Prisoners brought a class action suit against the conditions of confinement in certain Tennessee adult prison facilities, alleging unconstitutional conditions. The district court held certain conditions and practices amounted to cruel and unusual punishment. Inmates have no constitutional claim to any particular security classification, but if proof shows a sufficient connection between an improper classification system and the violation of a constitutionally protected right, such as the right to be free from excessive violence, there may be just cause for court intervention. (Tennessee Correctional System)

1983

U.S. Appeals Court
PRETRIAL
DETAINEES
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
CLASSIFICATION
TRANSFER
DUE PROCESS

Olim v. Wakinekona, 461 U.S. 238 (1983). Petitioners were members of a prison "Program Committee" who investigated a breakdown in discipline and the failure of certain programs within the maximum control unit of the Hawaii State Prison outside Honolulu and singled out the respondent and another inmate as troublemakers. After a hearing, the respondent having been notified thereof and having retained counsel to represent him, the same committee recommended that the respondent's classification as a maximum security risk be continued and that he be transferred to a prison on the mainland.

The administrator of the prison accepted the Committee's recommendation, and the respondent was transferred to a California state prison; he then filed suit against the petitioners in federal district court, alleging that he had been denied procedural due process because the Committee that recommended his transfer consisted of the same persons who had initiated the hearing, contrary to a Hawaii prison regulation, and because the Committee was biased against him.

The district court dismissed the complaint, holding that the Hawaii prison regulations governing prison transfers did not create a substantive liberty interest protected by the due process clause of the fourteenth amendment. The court of appeals disagreed and reversed.

The United States Supreme Court held: 1. An interstate prison transfer does not deprive an inmate of any liberty interest protected by the due process clause in and of itself. Just as an inmate has no justifiable expectation that he will be incarcerated in any particular prison within a state so as to implicate the due process clause directly when an intrastate prison transfer is made, Meachum v. Fano, 427 U.S. 215; Montanye v. Haymes, 427 U.S. 236, he has no justifiable expectation that he will be incarcerated in any particular state. Statutes and interstate agreements recognize that, from time to time, it is necessary to transfer inmates to prisons in other states. Confinement in another state is within the normal limits or range of custody which the conviction has authorized the transferring state to impose. Even when, as here, the transfer involves long distances and an ocean crossing, the confinement remains within constitutional limits. Pp. 244-248.

2. Nor do Hawaii's prison regulations create a constitutionally protected liberty interest. Although a state creates a protected liberty interest by placing substantive limitations on official discretion, Hawaii's prison regulations place no substantive limitations on the prison administrator's discretion to transfer an inmate. For that matter, the regulations prescribe no substantive standards to guide the Program Committee whose task is to advise the administrator. Thus no significance attaches to the fact that the prison regulations require a particular kind of hearing before the administrator can exercise his unfettered discretion. Pp. 248-251. 664 F.2d 708, reversed. (Hawaii State Prison)

U.S. Appeals Court
PRETRIAL
DETAINEE
FAILURE TO
PROTECT

Stokes v. Delcambre, 710 F.2d 1120 (5th Cir. 1983). Award of \$380,000 to a college student is upheld by circuit court. In a civil rights suit, the U.S. Court of Appeals for the Fifth Circuit has upheld a lower court's decision to award \$380,000 in compensatory and punitive damages against a Louisiana sheriff and his deputy. The twenty-one year old plaintiff was arrested with three other occupants of a truck after a beer bottle was thrown at a pedestrian. While housed in the dayroom of the local jail, the plaintiff was beaten and forced to engage in sexual acts by two inmates. His yells and screams for help were ignored by jail staff.

The circuit court affirmed the jury award of \$205,000 in punitive damages against the sheriff, \$105,000 in punitive damages against the deputy, and \$70,000 in compensatory damages against both defendants. The court concurred that jailers owe a constitutional duty to prisoners to provide them protection from injury, that the evidence indicated an indifference to the safety of prisoners, that due to the indifference a "good faith" defense was not warranted, and that punitive damages were appropriate because the actions of the defendants were malicious, wanton and oppressive. (Vermillion Parish Jail, Louisiana)

U.S. Appeals Court
CLASSIFICATION

Wilkerson v. Maggio, 703 F.2d 909 (5th Cir. 1983). Inmate's conduct justifies keeping him in maximum security. It was not unreasonable or arbitrary to consider an inmate a security risk since his past prison conduct had warranted the Reclassification Board's decision to keep him in maximum security, the Fifth Circuit Court of Appeals has ruled. The inmate's record showed that the inmate had participated in riots, that he attacked and assaulted correctional officers, and that he was convicted for the murder of another inmate. Although the inmate was not permitted any outdoor exercise for five years, he was allowed daily, one hour exercise outside his cell in any manner he desired. As such, no violation of the eighth amendment's prohibition against cruel and unusual punishment had occurred. (State Penitentiary, Angola, Louisiana)

1984

U.S. District Court
AIDS
SEPARATION

Cordero v. Coughlin, 607 F.Supp. 9 (S.D. N.Y. 1984). Court upholds practice of segregating prisoners with AIDS. Noting that fellow prisoners ostracize those diagnosed with the disease, and the uncertainty in the medical community concerning its cause and transmission, a federal court upheld the practice of segregating AIDS victims from the general population. (Department of Corrections, New York State)

U.S. District Court
CLASSIFICATION

Monmouth County Correctional Institution Inmates v. Lanzaro, 595 F.Supp. 1417 (D. N.J. 1984). Federal court sets cap on New Jersey county jail population and orders relief for prisoners. After an extensive review of the conditions at the Monmouth County jail the U.S. District Court for the District of New Jersey has concluded that both pretrial and sentenced inmates are being denied constitutional rights.

The court placed a cap on the population of the jail and ordered relief in the areas of physical conditions, bedding, recreation, medical care, classification and visiting. (Monmouth County Correctional Institution, New Jersey)

1985

U.S. District Court
CLASSIFICATION
CRITERIA

Freeman v. Fuller, 623 F.Supp. 1224 (D.C. Fla. 1985). A federal court dismissed an inmate's claim that he suffered mental cruelty by being placed in a cell with those he considered dangerous. The court stated that "decisions regarding classification of prisoners are not usually susceptible to attack through a civil rights claim in federal court unless the circumstances are exceptional." Other procedures established by state and federal prisons provide avenues for grievances. See Young v. Wainwright, 449 F.2d 338 (5th Cir. 1971); and Brooks v. Wainwright, 439 F.Supp. 1335 (M.D. Fla. 1977). (Dade County Jail, Florida)

U.S. District Court
DUE PROCESS

Marshall v. Kozakiewicz, 601 F.Supp. 1549 (1985). A state prison inmate who was briefly housed in a county jail during a post-conviction proceeding brought action against jail officials challenging their custodial classification of him during his stay there. After a United States magistrate entered judgment in favor of county jail officials and against the inmate, the inmate appealed. The district court held that: (1) the Pennsylvania scheme for classifying prisoners at county jails accords county jail officials broad discretion in classification of prisoners, and, therefore, does not create a protectable fourteenth amendment liberty interest, and (2) the county jail memorandum governing high risk security prisoners, as merely a descriptive rather than a substantive predicate, did not create a protectable fourteenth amendment liberty interest. (Allegheny County Jail, Pennsylvania)

1986

U.S. Appeals Court
DUE PROCESS

Beard v. Livesay, 798 F.2d 874 (6th Cir. 1986). A prison inmate brought an action challenging his reclassification without a hearing from minimum security to medium security as violating his liberty interest and his security status. The United States District Court granted summary judgment to the inmate, and the prison officials appealed. The court of appeals held that: (1) Tennessee regulations (requiring elaborate procedures for security reclassification of prison inmates and imposing limitations that the inmate must merit reduction or enhancement of security designation) create a protectable liberty interest; (2) the inmate was not entitled to have his transfer records expunged; and (3) the inmate's reclassification from minimum to medium security would be expunged from record. Prison officials may create liberty interests protected by due process clause by policy statements, regulations, or other official promulgations. Inmates, however, must have a legitimate claim of entitlement to interest, not merely a unilateral expectation. (Bledsoe County, Tennessee Regional Correctional Facility)

U.S. Appeals Court
JUVENILES

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

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

The superintendent of the juvenile detention center shoved the juvenile and slammed him against a wall and a metal bunk of the isolation cell after the juvenile laughed at a prank of another detainee and protested imposition of isolation of that detainee. This violated liberty interests protected by the fourteenth amendment, where the juvenile had not threatened to harm any property, employees, or other detainees at the center. The juvenile's injuries required medical treatment, and the superintendent's act was one of a series intended to punish the juvenile rather than maintain discipline at the center.

In determining whether the injuries sustained by the juvenile from the conduct of the superintendent of the juvenile detention center violated the juvenile's liberty interests protected by the fourteenth amendment, the fact that the juvenile did not suffer broken bones and permanent disfigurement did not require dismissal of the juvenile's injuries as negligible.

A three-day refusal to provide medical attention to the juvenile detained at the juvenile detention center pending trial on delinquency charges was a reckless disregard of the juvenile's medical needs.

Instead of an award of nominal damages of one dollar, the juvenile, who had been a pretrial detainee at the juvenile detention center, should have been awarded compensatory damages for imposition of isolation without procedural due process, for being a period beyond the maximum period set out in regulations of the Florida Department of Health and Rehabilitative Services, and for his humiliation and dejection sustained as a result of such isolation, where the juvenile was isolated for several days, shackled and handcuffed to a metal bunk for part of that time, and deprived of virtually every physical or emotional stimulus. (Volusia Regional Juvenile Detention Center, Florida)

U.S. Appeals Court
CLASSIFICATION
CRITERIA

Hendking v. Smith, 781 F.2d 850 (11th Cir. 1986). Appeals court upholds classification practices which deny sex offenders participation in certain programs. A class action suit challenged prison rules which denied certain privileges to inmates with histories of violent sex offenses, alleging a violation of equal protection guarantees. The plaintiff argued that sex offenders are no different from other criminals and should be entitled to the same opportunities and privileges during incarceration. The appeals court disagreed with the plaintiff, stating "...it seems clear as a matter of general knowledge that it would not be appropriate to allow sex offenders the opportunity to leave the prison on passes permitting them to mingle with the general public..." The court found that the prison classification system was neither arbitrary nor capricious. (Alabama Prison System)

U.S. District Court

Inmates of Occoquan v. Barry, 650 F.Supp. 619 (D.D.C. 1986). A class of inmates confined at state medium security facilities brought a federal civil rights action seeking declaratory and injunctive relief for deprivation under color of state law of fifth and eighth amendment rights. Overcrowding and systemically deficient conditions at state medium security institutions constituted cruel and unusual punishment in violation of the eighth amendment justifying equitable relief of imposition of cap on a number of inmates at each facility and requirement of periodic reports indicating what steps were being taken to address deficiencies.

The classification of inmates is essential for the prison security. One critical function of classification is the efficient identification of violent, aggressive inmates and those in need of psychiatric care, so that they can be separated from the rest of the population. See, e.g., Palmigiano v. Garrahy, 443 F.Supp. 956 (D.R.I.1977). The classification system at Occoquan appears to be dangerously overtaxed by the crush of inmates in need of classification. (Lorton Correctional Complex, District of Columbia)

U.S. District Court
TRANSFER

Jeffries v. Reed, 631 F.Supp. 1212 (E.D. Wash. 1986). A death row inmate challenged the constitutionality of his transfer to the intensive management unit of the prison and also challenged the conditions of his incarceration in that unit. On cross motions for summary judgment, the district court held that: (1) the transfer of an inmate to a unit on the grounds that he inherently imposed a security risk in light of his sentence did not deny the inmate due process; (2) inspection of the inmate's legal mail by staff of the unit did not violate the inmate's rights of free speech or equal protection; (3) digital rectal search which the inmate underwent prior to being transferred to the unit and strip and visual body-cavity searches he underwent each time he left his cell did not constitute unreasonable searches and seizures; (4) denial of contact with other inmates did not violate the first, sixth, or fourteenth amendments; and (5) the telephone schedule, permitting the inmate to place a collect call to his attorney at least three times per week between the hours of 8:00 a.m. and 4:00 p.m. did not deny the inmate adequate access to counsel and the courts. (Intensive Management Unit, State Prison, Washington)

State Court
TRANSFER
DUE PROCESS

Jenkins v. Fauver, 530 A.2d 790 (N.J. Super. A.D. 1986). According to a state court, inmates do not have a protectable interest arising from a due process clause along in residing in a particular environment. Inmates who, prior to reclassification, had been assigned to "full minimum" custodial status, filed a lawsuit claiming they were denied due process when they were transferred from a minimum security camp to the main prison and had their custodial classification changed to "full minimum, inside only" or "gang minimum." The action was taken in response to a series of escapes of inmates convicted of violent crimes. However, the appeals court, 528 A.2d 563, ruled against the "nonindividualized reclassification" of prison camp inmates with prior homicide convictions. (Rahway State Prison, New Jersey)

U.S. Appeals Court

Johnston v. Lucas, 786 F.2d 1254 (5th Cir. 1986). Prison officials released from liability for prisoner stabbing by appeals court in light of recent Supreme Court rulings. A federal district court awarded a prisoner monetary damages from guards and prison officials for improperly placing him with another prisoner who had known animosity toward him. The appeals court noted that the eighth amendment affords

prisoners protection against injury at the hands of another prisoner, but that the Supreme Court had recently stated that "the protections of the Due Process Clause, whether procedural or substantive, are not just triggered by lack of due care by prison officials." Davidson v. Cannon, 106 S.Ct. 668 (1986). While each official bore responsibility for exposing the prisoner to danger, the court found it arguable that their default could be considered an abuse of power and an eighth amendment deprivation. As stated in Whitley v. Albers, 106 S.Ct. 1078 (1986), the deliberate indifference standard articulated in Estelle v. Gamble is appropriate in this case. The appeals court concluded that none of the defendants could be shown to be liable because none of them was guilty of conscious indifference to the danger of or infliction of unnecessary pain. (Parchman State Penitentiary, Mississippi)

U.S. District Court
TRANSFER
DUE PROCESS

Paoli v. Lally, 636 F.Supp. 1252 (D.Md. 1986). The actions of Maryland's Commissioner of Corrections in transferring a prisoner from a minimum security facility to a maximum security institution and in denying minimum security classification did not violate the provisions of Maryland statutes or regulations and did not contravene liberty interests, if any, established by them in favor of persons such as the prisoner. The prisoner suffered from a physiological defect, a testosterone level approximately twice that of a normal male, which gave rise to his criminal behavior. It was an appropriate concern of the commissioner that the prisoner posed a danger to others if he should escape from minimum security and failed to continue to receive regularly scheduled Depo-Provera injections. (Maryland Penitentiary)

U.S. District Court
AIDS
SEPARATION

Powell v. Department of Corrections, State of Okl., 647 F.Supp. 968 (N.D.Okla. 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
PRETRIAL
DETAINEES

Reece v. Gragg, 650 F.Supp. 1297 (10th Cir. 1986). A pretrial detainee representing a class of all present and future pretrial detainees and sentenced inmates held in the county jail brought action seeking injunctive relief to require that operation of the jail under present conditions cease. The district court held that: (1) the current operation and condition of the county jail violated the due process clause of the fifth and fourteenth amendments and the eighth amendment's prohibition against cruel and unusual punishment, and (2) due to unconstitutional conditions at the jail, an injunction was warranted, but would be stayed under conditions outlined by court. To the extent that the county jail is unable to segregate pretrial detainees and sentenced inmates, the higher standard applicable under the due process clause, rather than the eighth amendment, must be met by the entire facility. (Sedgwick County Jail, Kansas)

U.S. Appeals Court
CLASSIFICATION
CRITERIA

Shelby County Jail Inmates v. Westlake, 798 F.2d 1085 (7th Cir. 1986). Conditions of the Shelby County Jail in Indiana did not violate the constitutional rights of inmates, says a U.S. Appeals Court. Inmates at the Shelby County Jail (SCJ) filed a suit alleging that the totality of conditions and practices at SCJ violated their constitutional rights. The inmates claimed the jail's twenty footcandles of illumination did not meet minimum standards. The county's expert, however, took readings in the courtroom which revealed eighteen footcandles at the judge's bench. The inmates complained that they did not have any meaningful opportunity for outdoor exercise or activities. The county testified the inmates were allowed to play cards and board games, read books, ride exercise bikes, and were provided with American Medical Association booklets on indoor exercise. The inmates contended that SCJ's classification system failed to adequately segregate pretrial and convicted prisoners, males and females, and juveniles and adults. The county rebutted. The inmates also alleged that inmates with emotional and medical problems were not segregated from the general population. The county testified otherwise, maintaining that incoming inmates were screened, and serious medical and emotional conditions were sent to the county hospital or mental health center. The appeals court determined that the county presented sufficient evidence to support a finding that none of the conditions amounted to constitutional violations. (Shelby County Jail, Indiana)

U.S. Appeals Court
DUE PROCESS

Stokes v. Fair, 795 F.2d 235 (1st Cir. 1986). A Massachusetts prison inmate challenged the imposition of "awaiting action status" detention regulations alleging noncompliance with due process. The district court entered a summary judgment in favor of the inmate, and the correction official appealed. The court of appeals held that "awaiting action status" detention regulations created a liberty interest entitling the inmate to procedural due process in initiation and continuance of awaiting action status detention. Regulations authorizing placement of a prison inmate in "awaiting action status" pending other procedures and specifying conditions under which inmates may be reclassified to higher custody status created liberty interest entitling inmates to procedural due process in initiation and continuance of awaiting action status detention through use of unmistakably mandatory language and substantive predicates for such change in status. (Department of Corrections, Massachusetts)

U.S. District Court
SUICIDE
FAILURE TO
PROTECT

Strandell v. Jackson County, Ill., 634 F.Supp. 824 (S.D.Ill. 1986). The parents of a pretrial detainee who committed suicide brought a civil rights action against the county and the prison officials. The district court held that: (1) the parents stated a claim that the detainee was deprived of due process right to be free from punishment; (2) the parents stated cause of action under Illinois statutes and regulations; (3) the county was not immune from liability; (4) the county sheriff, jailor and superintendent were not immune from liability; (5) parents could not recover punitive damages or prejudgment interest; and (6) the district court would retain pendent jurisdiction over state law claims. Mandatory language of Illinois county jail standards providing that detainee shall be assigned to suitable quarters, that emotionally disturbed detainee shall be kept under constant supervision, and that suspected disturbed detainee shall be immediately examined by a physician creates a protected liberty interest and an expectation of certain minimal standards and treatment. The parents stated a civil rights cause of action under the fourth and fourteenth amendments by alleging that prison officials violated the detainee's liberty interest and expectation of certain minimal standards for the physical condition of the jail facility, as established by Illinois regulations, and an expectation of treatment that protects safety, health, and well-being of pretrial detainees.

No protected liberty interest could be premised on state jail standards relating to the physical condition of the jail, with respect to action based on the suicide of a pretrial detainee while confined in the county jail, where state jail standards did not require the county jail which had been built in 1926 to comply with standards regarding physical conditions until January 1986, and the death occurred in March 1984. The fact that the individual inmate could not, under state law, demand compliance with state jail standards, did not establish that inmates had no claim of entitlement to have those standards followed, where state Department of Corrections was given right to enforce compliance with state jail standards. (Jackson County Jail, Illinois)

U.S. District Court

Strickland v. Dyer, 628 F.Supp. 180 (E.D.Ark. 1986). An inmate brought an action challenging his reclassification by a prison disciplinary committee. On the defendants' motion to dismiss, the district court held that an Arkansas statute governing classification of inmates did not protect the inmate's right to any particular classification, so that reduction of the inmate's classification for violation of a prison rule did not violate the inmate's due process rights. (Department of Corrections, Arkansas)

1987

U.S. District Court
DUE PROCESS

Bruscino v. Carlson, 654 F.Supp. 609 (S.D. Ill. 1987). Action was brought by federal inmates complaining of use of excessive force, performance of rectal searches, amount of time they had to spend in their cell, transfer procedures and various other conditions that had existed at prison since "lockdown" began. On objections to magistrate's report and recommendation, the district court held that: (1) restraining control unit inmates during legal visits did not violate their right of access to the courts; (2) rectal searches at the prison did not constitute unnecessary and wanton infliction of pain within the meaning of the eighth amendment; (3) restraining federal inmates to beds for prolonged periods without checking them every thirty minutes violated federal regulations but because incidents were isolated, there was no policy or practice of abuse and thus no constitutional violation requiring injunctive relief; (4) "out of cell time" granted federal prisoners for exercise and recreation did not violate the eighth amendment where the inmates in disciplinary segregation and protective custody were allowed five hours exercise per week outside their cells, and the prisoners in control unit were permitted seven hours exercise per week, and general population inmates received eleven hours of exercise per week; and (5) inmates had no right to a due process hearing before placement at and/or transfer to a maximum security federal prison. Although control unit inmates at the prison were given a hearing before placement in that unit, there were distinct differences between conditions of confinement for general population and control unit. (Marion Penitentiary, Illinois)

U.S. Appeals Court
SEGREGATION

Bailey v. Shillinger, 828 F.2d 651 (10th Cir. 1987). After his voluntary transfer to a prison in another state, a Wyoming state prisoner who was serving a sentence for first degree murder murdered another prisoner and was returned to the Wyoming State Prison. The warden assigned him to a maximum security unit without a formal hearing. The prisoner filed a civil rights lawsuit against the warden, alleging his due process rights had been violated. He also charged that he was subjected to cruel and unusual punishment by being deprived of exercise and fresh air. The appeals court concluded that, because of the danger the inmate presented to other inmates and staff, the court concluded the warden was correct in assigning the inmate to maximum security. As to the cruel and unusual treatment charge, the court concluded that the one hour per day of exercise and fresh air was "restrictive" but did not violate the Eighth Amendment. (Wyoming State Prison)

U.S. Appeals Court
DUE PROCESS
SEGREGATION

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
DISCIPLINE
CORRESPONDENCE

Brooks v. Andolina, 826 F.2d 1266 (3rd Cir. 1987). A federal appeals court ruled that (1) it is unlawful to place an inmate in segregation simply because he wrote a letter complaining of a female employee's search of a visitor, (2) prison officials' refusal to permit an inmate to call any witnesses at a disciplinary proceeding violated the inmate's procedural due process rights, and (3) the inmate was not entitled to lost wages. An inmate complained in a letter to the NAACP that a female correctional officer searched his visitor in a seductive manner. He was issued a misconduct report for disrespect toward a staff member, and after a hearing, was sentenced to 30 days punitive segregation. The Third Circuit Court of Appeals noted that the Supreme Court has clearly ruled that prison officials may not censor inmate correspondence to eliminate unflattering or unwelcome opinions, (Procunier v. Martinez, 416 U.S. 396). Further, prison officials cannot punish inmates for statements made in letters to outsiders, even if the inmate could be punished if he made the statements orally to a prison employee. The court continued that if regulations concerning censoring are in existence, they must be for the purpose of security, order, or rehabilitation. Because prison officials cannot censor unflattering statements in letters to outsiders, they cannot punish an inmate for the contents of such letters; therefore, the action taken against Brooks for writing the letter violated his constitutional rights. Prison officials' refusal to permit an inmate to call any witnesses at a disciplinary proceeding violated the inmate's procedural due process rights. The officials failed to show that permitting an inmate to call witnesses would have been unduly hazardous to the institutional safety or correctional goals, and to the extent that refusal by prison officials to permit the inmate to call witnesses at a disciplinary proceeding was based on the inmate's failure to comply with the rule requiring prehearing identification of witnesses. The refusal was clearly arbitrary and capricious in that the rule was a new rule to which the inmate had no access and with which the inmate had no opportunity to comply. The inmate, who was sentenced in a disciplinary proceeding to 30 days punitive segregation in violation of his First and Fourteenth Amendment rights, was not entitled to damages for lost wages in his Section 1983 action against prison officials; even though the inmate testified that he lost wages as a result of the unwarranted transfer to punitive segregation, the inmate failed to offer any evidence as to what those wages were. (State Correctional Institute at Pittsburgh, Pennsylvania)

State Appeals Court
PRETRIAL
DETAINEES
SEPARATION
FAILURE TO
PROTECT

DeBow v. City of East St. Louis, 510 N.E.2d 895 (Ill. App. 1987), cert. denied, 116 Il2d 552. A detainee was injured during his confinement in a city lockup. He was arrested for illegal transportation of alcohol and he was placed in the same cell with a man arrested for aggravated assault. The plaintiff was later found unconscious on the floor of the cell with a severe head injury. Blood was found on one of the boots that were in the possession of the other occupant of the cell. The injured detainee sued the city and its police chief alleging that pre-trial detainees were inadequately supervised, that officers failed to monitor their conduct and failed to segregate violent detainees from other detainees. The inmate suffered permanent brain injury from the assault and a jury initially awarded \$3.4 million in damages. On appeal, the court upheld this award, noting that "specific intent" to deprive the detainee of his rights was not required. The state appeals court found that the plaintiff had established that the defendants had received numerous notices of noncompliance with minimum jail safety standards, including a warning that detainees were being inadequately supervised. Hourly visual checks of detainees were not being conducted and no one understood it to

be their official duty to conduct such routine checks. According to the court, it is sufficient that the defendants acted recklessly by disregarding detainee safety. This disregard can be demonstrated either by both deliberate acts or by the failure to act. Since the repeated notices of noncompliance with safety standards provided notice of unsafe conditions, the appeals court agreed that the jury could conclude that the failure to act to correct the situation was reckless. (City of East St. Louis, Illinois)

U.S. District Court
AIDS

Dinger v. City of New Albany, 662 F.Supp. 929 (S.D. Ind. 1987). A civil rights action was filed against the city and a police officer by three inmates. They claimed that they were exposed to AIDS while confined, violating their Eighth Amendment right against cruel and unusual punishment. They requested that all inmates be given AIDS screening tests and all homosexual inmates be segregated. The court said that exposing inmates to a communicable disease may violate their constitutional rights, but that the problem of protecting inmates against AIDS is "best left to the legislature and prison administrators." (City of New Albany, Indiana)

U.S. District Court
DUE PROCESS

Hechavarria v. Quick, 670 F.Supp. 456 (D.R.I. 1987). A Rhode Island regulation providing that an inmate shall receive timely written notice when a downgrading of his classification is being considered, and a regulation providing that no misconduct shall be considered by the classification board unless the disciplinary board has made a finding unfavorable to the inmate, do not create a liberty interest in a particular prison classification. The regulations are purely procedural in nature, and do not state that an inmate has a vested right to a particular prison status. (Rhode Island Adult Correctional Institution)

U.S. Appeals Court
DUE PROCESS

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)

U.S. District Court
CLASSIFICATION
CRITERIA

Jones v. Hodge, 662 F.Supp. 254 (E.D.N.C. 1987). A North Carolina inmate did not have a constitutionally protected interest in a more desirable custody classification. The federal district court would not recognize a liberty interest in a prisoner's custody classification unless state law or prison regulations used explicitly mandatory language in requiring that administrators use specific substantive procedures in setting or modifying the inmate's classification. (North Carolina)

U.S. District Court
AIDS
ISOLATION

Judd v. Packard, 669 F.Supp. 741 (D.Md. 1987). After noticing that an inmate suffered from various illnesses and weight loss, prison officials put him in medical isolation on three separate occasions for testing, diagnostic and treatment purposes, including testing for exposure to AIDS. After testing positive for the HTLV-III antibody present in those exposed to AIDS, the inmate filed a federal lawsuit claiming that each placing of him in isolation was an act of discrimination on the basis of a handicap, i.e., a positive HTLV-III test, and consequently, a violation of his civil rights. The federal district court found that there was no claim under the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, because the inmate had not alleged any "nexus" between the allegedly discriminatory conduct of the defendant prison officials and a specific program receiving federal funding. The court also that, even assuming that testing positive for HTLV-III constituted a handicap, discrimination against handicapped individuals "is not invidious discrimination, and thus, it is not subject to strict or heightened judicial scrutiny." Therefore, the court found that the correct test to be applied was whether the prison's actions had a legitimate purpose and whether it was rational to believe that the treatment afforded the individual would promote that purpose. (Mayo Correctional Institution, Maryland)

U.S. District Court
AIDS
SEGREGATION

McDuffie v. Rikers Island Medical Department, 668 F.Supp. 328 (S.D.N.Y. 1987). A federal district court ruled against a prisoner who filed a civil rights suit against prison officials, alleging that misdiagnosis of an AIDS-related ailment resulted in his placement in segregated housing for five months. The court found that the prisoner's allegations failed to establish a claim of deliberate indifference to serious medical needs. The diagnosis was made in 1982, prior to the development of a test for the AIDS virus, and was on the basis of two skin biopsies which were consistent with Kaposi's Sarcoma, which is a form of cancer common to AIDS patients. The court

concluded that the diagnosis was not grossly negligent when the prisoner was later determined not to have AIDS. The court further ruled that the prisoner's allegations failed to establish a claim of deliberate indifference to serious medical needs--the prisoner did not allege that he suffered any physical harm due to the misdiagnosis or that medical officials deliberately ignored his serious medical needs, and there was no indication of gross negligence in the initial AIDS diagnosis. (Downstate Correctional Facility, New York)

U.S. District Court
SEPARATION
FAILURE TO
PROTECT
PRETRIAL
DETAINEES

Ryan v. Burlington County, 674 F.Supp. 464 (D.N.J. 1987), cert. denied, 109 S.Ct. 1745. A pretrial detainee rendered quadriplegic by his cellmate, a state prisoner who had been awaiting transfer to a state run facility as a parole violator for 58 days alleged deprivation of a constitutional right in an action against various state and county defendants. The federal district court ruled that pretrial detainees had a constitutional right to be housed separately from known dangerous convicted inmates who posed a threat to their personal security unless physical facilities did not permit their separation and that the detainee could prove a constitutional violation if he could prove at trial that classification was feasible at the county jail. Affirmed 860 F.2d 1199. (Burlington County Jail, New Jersey)

State Appeals Court
JUVENILES

State Ex. Rel. M.L.N. v. Greiner, 360 S.E.2d 554 (W.Va. 1987). Prisoners filed petitions challenging their confinement in correctional center. A state appeals court held that juveniles between the ages of 18 and 20 who remained under jurisdiction of juvenile court may not be incarcerated within sight or sound of adult prisoners. Juveniles who remain under continuing juvenile court jurisdiction even after their 18th birthday must be afforded the same commitment and rehabilitation rights as delinquent juveniles under the age of 18 who are under the juvenile court jurisdiction. Due process requires that nature of custody of juvenile bear relation to rehabilitative purpose. (Wood County Correctional Center)

U.S. Appeals Court
SEGREGATION

Tyler v. Black, 811 F.2d 424 (8th Cir. 1987), cert. denied, 109 S.Ct. 1760. On appeal, a federal court held that: (1) the mass transfer of inmate to a segregation unit during a period of prison unrest did not violate due process, but (2) double celling of inmates in small cells with solid "boxcar" type doors was cruel and unusual punishment in violation of Eighth Amendment. The mass transfer of inmates to a segregation unit during a period of prison unrest did not violate due process, where inmates were given 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)

State Court
DUE PROCESS

White v. Fauver, 530 A.2d 37 (N.J. Super. A.D. 1987). An inmate at a prison appealed the final decision of the Department of Corrections affirming a classification committee's decision to reduce his custody status. The Superior Court held that: (1) the inmate had no constitutionally protected liberty interest in his reduced custody status in prison, and (2) an inmate whose custody status was increased, not as result of any activity on his part between reduction of status and increase, but rather as a result of a change in approach, motivated by escape of another prisoner, received all due process to which he was entitled. A change in inmate's security classification within prison must be for cause and not arbitrary. (Adult Diagnostic & Treatment Center, New Jersey)

1988

U.S. District Court
AIDS

Baez v. Rapping, 680 F.Supp. 112 (S.D.N.Y. 1988). An inmate charged that he was segregated and discriminated against after he tested positive for the AIDS virus. According to the inmate, he was denied access to courts, the law library, church and recreational activities after medical authorities issued advice to staff to avoid his body fluids. The district court held that the medical director and his staff were entitled to qualified immunity against the lawsuit. The claim against the warden was allowed to proceed. The warden claimed the detainee was in segregation because of his "deviant behavior," not because of his medical condition. There was no evidence given to the court that the inmate had been given any notice of the reason for his segregation or a chance to be heard. Therefore, there was a question of fact as to whether or not he had been deprived of his rights without due process. Although an earlier decision by the court had upheld the authority of the jail to segregate inmates with AIDS, the court found in this case that the inmate had a right to know of AIDS was the reason for his segregation. The court allowed the claim for punitive damages to proceed, since the prisoner's charges were that he "may be the victim of malicious and discriminatory treatment" because of his condition. (Westchester County Jail, New York)

U.S. Appeals Court
PROTECTIVE
CUSTODY

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)

State Appeals Court
FAILURE TO
PROTECT
JUVENILES

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

U.S. District Court
AIDS
TRANSFER
SEPARATION

Doe v. Coughlin, 697 F.Supp. 1234 (N.D.N.Y. 1988). An inmate brought an action on behalf of a class of inmates confined in correctional facility in New York seeking preliminary injunction prohibiting further implementation of a program involving the involuntary transfer of inmates who tested positive for Human Immunodeficiency Virus to a separate dormitory. The district court granted the request, finding that the inmate was entitled to a preliminary injunction. The inmate, who had tested positive for the Human Immunodeficiency Virus, had a standing to maintain a cause of action challenging, on the right to privacy grounds, the involuntary transfer of all inmates who tested positive for HIV to a special dormitory, even though the inmate had not yet been transferred, where the Department of Correctional Services officials unambiguously maintained they intended to go forward with their program of placing all positive testing inmates in a special dormitory, and such placement would effectively reveal the inmate's medical conditions to third parties without his consent. There were approximately 400 known cases where inmates had tested positive for the HIV virus, and questions of law concerning the right of privacy and the reasonableness of the transfer program were common to all proposed class members. Claims and defenses of each member arose from the same course of conduct, and maintaining the anonymity of the class members established an additional reason for certification. Although improving and expediting the medical care for such inmates was a desirable and highly commendable objective, the involuntary segregation of the inmates violated the inmates' constitutional rights to privacy, and the same objectives could be provided in a program designed to allow the inmates a choice of whether they wished to be housed in a separate dormitory. The court noted that there are "few matters" of a more personal nature, and there are "few decisions" over which a person could have a "greater desire to exercise control," than the manner in which he reveals a diagnosis of positive exposure to AIDS to others, including other inmates and family members. (New York State Department of Correctional Services)

U.S. Appeals Court
SUICIDE
SPECIAL NEEDS
PRETRIAL
DETAINEES

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. (Concord City Jail, Concord, California)

U.S. Appeals Court
MENTALLY ILL
FAILURE TO
PROTECT

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

U.S. Appeals Court
DUE PROCESS
SEPARATION

Gladson v. Rice, 862 F.2d 711 (8th Cir. 1988). A prisoner brought a Section 1983 action to challenge his temporary confinement, in a county jail, apart from the general inmate population during his ten-day transfer from a state penitentiary in connection with post-conviction proceedings on his behalf. The U.S. District Court granted summary judgment in favor of the county sheriff and members of the jail staff, and the inmate appealed. The appeals court affirmed the lower court decision, finding that the prisoner's due process rights were not violated by the confinement. Prison officials received information from the penitentiary personnel that the prisoner was considered an escape risk who had a potential for violence, and there was no appreciable difference between the prisoner's basic status and living conditions in the penitentiary and those in the jail to which he was temporarily assigned. The court also found that the prisoner's constitutional guarantee against cruel and unusual punishment was not violated by the county prison's denial to him of unlimited access to certain amenities and privileges such as radio, television, telephone, showers, visitors, exercise, and cigarettes. The jail officials evaluated the prisoner's potential threat to the jail security in light of the information received from the correctional officials at the state penitentiary, and they provided the prisoner with a substantial equivalent of his penitentiary living arrangement. (Polk County Jail, Iowa)

U.S. Appeals Court
AIDS
FAILURE TO
PROTECT

Glick v. Henderson, 855 F.2d 536 (8th Cir. 1988). A civil rights suit was dismissed by a federal trial court alleging failure and refusal of various prison officials to protect inmates from exposure to AIDS, and the dismissal was upheld by the appeals court. The plaintiffs in this case claimed that at least five inmates in the facility have tested positive for the virus which causes AIDS. The inmates also argued that the prison neither tested inmates and personnel for exposure to the AIDS virus nor segregated all those who did test positive. The inmates felt that the combination of these factors, along with the existence of practicing homosexuals within the facility, placed them in immediate danger of contracting AIDS because of the daily interactions which take place among inmates and jail officials. Medical authorities testified that the inmates' complaint was based on "unsubstantiated fears and ignorance," which included allegations that they face a risk of contracting AIDS by: (1) coming into contact with the sweat of other inmates during work detail; (2) being subjected to bites from mosquitoes which have bitten other inmates; (3) being sneezed on by known homosexuals; (4) having food prepared by officials who are not tested for AIDS; and/or (5) the regular transfer of prisoners from cell to cell throughout the facility. The court found that these means are too remote to provide the proper basis for a grievance. These, along with other significant risks, which are not comprehended by medical science as creating a genuine concern for transmission of AIDS, were insufficient to entitle court intervention. (Arkansas Department of Corrections)

U.S. Appeals Court
FAILURE TO
PROTECT

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

from other inmates. The order requiring separation of the inmate from fellow inmates was not enforced, and the inmate's mother had been denied access to the deceased inmate's personal effects, including threatening letters from the other inmate. (McAlester, Oklahoma Prison)

U.S. District Court
AIDS
PRETRIAL
DETAINEES

Moenius v. Stevens, 688 F.Supp. 1054 (D. Maryland, 1988). An arrestee filed suit in state and federal court, alleging that the jailor's discretionary decision to place him in a detention cell bearing a sign entitled "AIDS cell" intentionally and maliciously inflicted emotional distress. The arrestee sought compensatory and punitive damages from the mayor and city council as well as the jailor. According to the police sergeant, the idea of putting the sign on the cell was conceived because some prisoners were under the impression that they wouldn't be searched for drugs if they told turnkeys that they were infested with AIDS. By putting a sign on the cell the jail personnel were hoping that the arrested person would see it and admit that they really didn't have AIDS, and to go ahead and search them. The court held that these facts showed "at most" a "half-baked idea of unknown origin which terminated at the first inquiry by supervising officials in the police department." The federal court granted summary judgment for the mayor, city council and the jailor. State claims that arose out of the incident were allowed to proceed to trial. (Baltimore City Police Department, Maryland)

U.S. Appeals Court
AIDS

Muhammand v. Carlson, 845 F.2d 175 (8th Cir. 1988), cert. denied, 109 S.Ct. 1346. An inmate alleged that he was deprived of a constitutionally protected liberty interest when he was transferred to, and confined in, a restricted AIDS unit. The appeals court ruled that the prison regulations for identifying, treating, and isolating prisoners carrying the AIDS virus did not give the inmate a reasonable expectation that he would not be transferred to the AIDS unit without a chance to challenge his medical classification and the regulations governing administrative detention did not apply to medical determinations. The court found that the true purpose of the transfer was for diagnostic, treatment and security purposes, and although the inmate was stigmatized by his classification in confinement in restricted unit for inmates carrying AIDS virus, that stigma arose primarily from public fear of, and misunderstanding about, disease, not from prison medical officials' misconduct and, therefore, stigma did not amount to infringement of inmate's constitutionally protected liberty interest. (United States Medical Center for Federal Prisoners in Springfield, Missouri)

U.S. Appeals Court
SEPARATION
FAILURE TO
PROTECT
CLASSIFICATION
CRITERIA

Walsh v. Mellas, 837 F.2d 789 (7th Cir. 1988), cert. denied, 108 S.Ct. 2832. A federal appeals court found that a state prison's classification and assignment procedures are unconstitutional insofar as they do not even require a review of an inmate's file before assigning him a cell or work partner. A prisoner filed suit after he was assaulted by his cellmate. The court found that in spite of prison officials' awareness of the general risk of gang-related violence against individuals targeted by gangs within the prison, they failed to institute procedures and safeguards in an attempt to determine whether an inmate to be housed with a gang member is targeted by that gang. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
TRUSTY

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)

U.S. Appeals Court
SEGREGATION
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)

State Appeals Court
CLASSIFICATION
CRITERIA
DUE PROCESS

Wolfe v. State, 759 P.2d 950 (Idaho App. 1988). An inmate sought a writ of habeas corpus challenging his classification in prison. The district court affirmed the decision of the Magistrate dismissing the petition, and the inmate appealed. The appeals court, affirming the decision, found that the inmate's due process rights were not violated when the classification committee considered hearsay materials in the presentence report in making its classification determination. The prison classification committee did not act arbitrarily when it ascribed risk points for classification purposes to an inmate who had been charged with escape. The court rejected an argument that the committee improperly assessed "points" upon the escape charge which had not been tried and proven. "We cannot say that a committee acts arbitrarily when it ascribes a risk to an inmate who has been charged with escape." The court noted that the committee acted only after the inmate had been given notice, a hearing, the right to present his side of the story and the opportunity to present witnesses on his behalf. (Idaho State Correctional Institution)

1989

U.S. Appeals Court
POLICY/
PROCEDURE
DUE PROCESS

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. District Court
DUE PROCESS
TRANSFER

Baptist v. Lane, 708 F.Supp. 920 (N.D. Ill. 1989). The U.S. District Court ruled that inmates' due process rights were not violated when they were transferred from a minimum security farm at a correctional center back into general population of the maximum security unit. According to the court, no state prisoner has an inherent due process right either to serve his sentence in a particular prison or section of prison or to receive a particular security classification. The state regulation governing inmate transfers effectively allows prison officials to reassign inmates for any reason. Therefore, inmates did not have a justifiable expectation of remaining on the farm to support a due process challenge to their transfer. Their due process claims were frivolous, and they were not entitled to file a civil rights action in forma pauperis. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
CLASSIFICATION
CRITERIA
TRANSFER

Baraldini v. Thornburgh, 884 F.2d 615 (D.C. Cir. 1989). A federal district court's determination that female inmates' first amendment rights were being violated was appealed by the defendants. Reversing and remanding the decision of the lower court, the appeals court found that there was sufficient merit to the placement of the inmates in the Federal Bureau of Prisons' highest security confinement institution for women. It was shown that the female inmates had associated with gangs and had access to dangerous weapons. They had helped in prison escapes, and had personally taken part in violent and criminal activities of those groups before their federal incarceration. It was also determined by the court that placement of inmates in the stated institution "solely" because of their "subversive statements and thoughts" was clearly erroneous. While inmates have a constitutional right to hold violent or revolutionary views and to maintain memberships in revolutionary organizations, prison administrators are not required to ignore those views and memberships when assessing dangers of their escapes from custody with outside help from those who hold like views and/or memberships. (Federal Correctional Institution, Lexington, Kentucky)

U.S. Appeals Court
CLASSIFICATION
CRITERIA
TRANSFER

Barfield v. Brierton, 883 F.2d 923 (11th Cir. 1989). A state prisoner brought a civil rights action against state corrections officials, alleging a violation of his constitutional rights through his transfer to an adult prison facility in violation of his liberty interest as a youthful offender. The prisoner appealed after the district court granted summary judgment for correctional officials. The court of appeals reversed the lower court and remanded the case. The court stated that the prisoner had raised genuine issues of material fact regarding the existence of liberty interest in him as a youthful offender, and whether the transfer violated his liberty interest as a youthful offender. (Florida State Prison)

U.S. District Court
AIDS

Bird v. Figel, 725 F.Supp. 406 (N.D. Ind. 1989). After a civil rights plaintiff was awarded compensatory and civil damages arising out of his incarceration in the county lockup facility, the defendant sheriff and deputy sheriffs moved for judgment notwithstanding the verdict or, in alternative, a new trial. The district court found that the evidence supported the jury award and the instruction on punitive damages was

proper. There was testimony that, during the plaintiff's two incarcerations, he was stripped and given only a white suicide gown to wear. He was placed in a cell with nothing in it but a steel bed frame, he was told to drink from the toilet, he was ridiculed for being gay and for having AIDS syndrome, and he was denied access to the telephone and other amenities. The plaintiff alleged that the conditions of his confinement, pursuant to the sheriff's suicide watch policy, were unconstitutionally restrictive. He also alleged that correctional officers intentionally or recklessly violated his constitutional rights during one period of confinement. As to the allegations pertaining to the correctional officers, the plaintiff specifically alleged that they denied him water and told him to drink out of the toilet, denied him access to the telephone, denied him all personal hygiene effects, denied him visitation, denied him writing materials and postage, made unauthorized disclosures of the fact that he suffers from AIDS-related complex and were deliberately indifferent to his medical needs.

The jury returned a verdict for the plaintiff with an award of \$600 compensatory damages against all three defendants for one period of incarceration, \$1000 punitive damages against two correctional officers for first period of incarceration and \$200 compensatory damages against another correctional officer on the second period of incarceration. (Allen County Lockup Facility, Indiana)

U.S. District Court
DUE PROCESS

Bonner v. Arizona Dept. of Corrections, 714 F.Supp. 420 (D. Ariz. 1989). A deaf inmate brought an action against a state correctional facility alleging deprivation of his rights under a statute prohibiting discrimination against handicapped persons by programs receiving federal financial assistance. The U.S. District Court granted summary judgment for the state, and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded the case. On remand, the District Court found that the Civil Rights Restoration Act, which defined the term "program or activity" in the Handicapped Act to include all operations of a department or agency receiving federal funds was entitled to retroactive effect.

Although selection to an honor dorm at the prison is highly discretionary, once the privilege is conferred, the inmate has specific due process rights governing his removal from the honor dorm. Where procedural guidelines governing the inmate's removal from the honor dorm used language of unmistakable mandatory character, there is a requirement that certain procedures "shall," "will," or "must" be employed. The court found that the inmate had a state-created constitutionally protected liberty interest in not being removed from the privilege of living in an "honor dorm" without due process. Due process required prison officials, because of the fact that a liberty interest was involved, to inform the prisoner of the charges against him and allow him to present his views. (Arizona State Prison)

U.S. District Court
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. District Court
PROTECTIVE
CUSTODY

Crozier v. Shillinger, 710 F.Supp. 760 (D. Wyo. 1989). Protective custody inmates brought an action to challenge the suspension of certain opportunities and benefits that were afforded to the general prison population. The defendants moved for a summary judgment. The District Court found that giving certain benefits and opportunities to the general prison population without giving those opportunities and benefits to protective

custody inmates was not cruel and unusual punishment. According to the court, a prisoner has no absolute constitutional right to visitation. Cancelling some visits for protective custody inmates due to conflicting visits to prisoners in the general population was constitutional. Giving the protective custody inmates fewer benefits and opportunities than the general prison population was not cruel and unusual punishment and did not violate the fourteenth amendment. The suspension of certain benefits and opportunities represented accommodation with institutional interest in providing adequate protection to protective custody inmates. (Wyoming State Penitentiary)

U.S. Appeals Court
SUICIDE
JUVENILES

Edwards v. Gilbert, 867 F.2d 1271 (11th Cir. 1989). A Section 1983 action was brought by an estate on behalf of a juvenile who committed suicide while in jail. The U.S. District Court denied the officials' motion for summary judgment in regard to counts against them in their individual capacities, and appeal was taken. The appeals court found that the conduct by jail officials in leaving a seemingly sleeping juvenile inmate, who had never threatened or attempted suicide and who had never been considered a suicide risk, in a secure cell for 45 minutes with another sleeping juvenile did not constitute deliberate indifference to the inmate's safety from self-harm. The individual officers were entitled to immunity from a civil rights action against them arising out of the inmate's suicide. The prisoner, who was awaiting sentencing, was not deprived of procedural due process under the fourteenth amendment by the placement in a particular cell or by the jailer's failure to observe him for an interval of more than 15 minutes. There was no contention that the actions of the jailers would have been proper if some sort of hearing had preceded the events surrounding the prisoner's suicide. Statutes and regulations governing the daily operations of county jails did not give the prisoner a right to an administrative hearing.

Jail officials did not demonstrate a deliberate indifference to the prisoner's safety from self-harm by the fact that the prisoner requested an appointment with the jail psychologist but that there was no record that he had seen one. Given the fact that it was not unusual for inmates to request to see a jail psychologist, the prisoner's request did not put jailers on notice that he was a potential suicide risk. It was also stated by the court that the failure of the jailers to adhere to state laws and regulations on the housing of juveniles in adult jails did not demonstrate a deliberate indifference toward the prisoner's safety from self-harm. In addition, standing alone, the violation of state laws and regulations requiring the sight and sound separation of juvenile and adult prisoners was not the basis for establishing a constitutional violation. (Okaloosa County Jail, Florida)

U.S. Appeals Court
DUE PROCESS
SEGREGATION

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
MENTALLY ILL
PROTECTIVE
CUSTODY
PUNITIVE
SEGREGATION
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." (District of Columbia's Occoquan Facility, Lorton Correctional Complex)

U.S. District Court
FAILURE TO
PROTECT
PRETRIAL
DETAINEES
SEPARATION

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

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

1990

U.S. District Court
SEGREGATION
TRANSFER

Brown v. Cunningham, 730 F.Supp. 612 (D. Del. 1990). An inmate filed a civil rights action alleging his constitutional rights were violated when he was transferred from general population to administrative segregation without being given a notice of opportunity to argue against the transfer. The district court found that the transfer of the inmate did not implicate any liberty interest and the case was dismissed. Neither the prison code of penal discipline nor the administrative regulations contained language concerning administrative segregation but, rather, vested discretion in the Delaware Department of Corrections to determine the inmate's classification and, thus, did not create a liberty interest in the inmate's right to be free from administrative segregation. (Delaware Correctional Center)

U.S. District Court
AIDS

Deutsch v. Federal Bureau of Prisons, 737 F.Supp. 261 (S.D.N.Y. 1990). A prisoner filed a pro se action claiming that his constitutional rights under the eighth amendment were violated by being assigned to a cellmate who tested positive to HIV antibodies. The district court found that the prisoner failed to present the court with sufficient facts to allow inference that the decision to house him with the cellmate was a deliberate indifference to the prisoner's medical needs. The prisoner did not have a clearly established constitutional right to be informed of whether the assigned cellmate tested positive for HIV antibodies. The court also found that the federal prison officials were shielded from the prisoner's eighth amendment claim as a result of immunity under the Federal Tort Claims Act. The prisoner failed to allege any facts to support the finding that prison officials were either specifically aware that the cellmate might violate prison rules and engage in high-risk behavior or that they condoned or allowed the violation of these rules, and, thus no basis existed for concluding that prison officials violated the prisoner's clearly established constitutional rights.

It was noted by the court that behavior resulting in a high risk of transmission of AIDS, such as sexual behavior between inmates, was prohibited. The prison's policy included a provision for removing inmates testing positive from the general population when there is "reliable evidence that their conduct may pose a health risk to other inmates." (Federal Correctional Institute, Otisville, New York)

U.S. District Court
AIDS

Farmer v. Moritsugu, 742 F.Supp. 525 (W.D. Wis. 1990). A prisoner who had tested positive for HIV brought an action alleging violation of his equal protection rights by prison officials' decision to prevent him from working in food services. The district court found that the decision to prevent the prisoner from working in food service after he tested positive for HIV was rationally related to legitimate security and order in the penal institution so the prisoner's equal protection rights were not violated. (Federal Correctional Institution, Oxford, Wisconsin)

U.S. Appeals Court
CLASSIFICATION
TRANSFER

Gomez v. Grossheim, 901 F.2d 686 (8th Cir. 1990). A state inmate brought a civil rights action against prison officials alleging that he was transferred from a medical classification center back to a minimum security institution and ultimately to the maximum security unit in retaliation for his refusal to keep a follow-up medical appointment. The U.S. District Court granted summary judgment for the prison officials and the inmate appealed. The appeals court found that evidence did not support the inmate's contention because each transfer was based on understandable prison policy rules and procedures and because further evaluation could not be pursued at the medical classification center. (Riverview Release Center, Newton, Iowa; Iowa Medical Classification Center, Oakdale, Iowa)

U.S. District Court
AIDS
SEGREGATION

Harris v. Thigpen, 727 F.Supp. 1564 (M.D. Ala. 1990), modified, 941 F.2d 1495. Inmates in the Alabama prison system, who were administratively segregated as Acquired Immune Deficiency Syndrome (AIDS) carriers, brought action against prison officials alleging that Alabama's testing of inmates for AIDS upon induction into, and before discharge from, the penal system violated the Constitution. The district court denied the relief requested and found that testing did not constitute an unreasonable search or seizure and did not violate the inmates' privacy rights.

According to the court, Alabama's testing of inmates for Acquired Immune Deficiency Syndrome (AIDS) upon induction into, and before discharge from, the state penal system did not constitute either an unreasonable search and seizure or a violation of the inmates' right to privacy. The regulations were reasonably related to prime considerations of penal confinement, safety and security, and there was no alternative method to protect the safety of other inmates and custodian officers and the security of the institution from the spread of disease.

The preponderance of evidence showed no violation of any rights of inmates who were AIDS carriers to medical or psychological or psychiatric care and no deliberate indifference to any serious medical or psychological need in the Alabama prison system. The prison system was not required to make available every drug or treatment that was being hailed as a possible cure for a disease considering the expense of the cure and the fact that Alabama was in a poor financial position to provide treatment. Inmates, who were diagnosed as AIDS carriers, were not "otherwise qualified handicapped individuals" under the Rehabilitation Act and reasonable accommodations would not make inmates otherwise qualified since after reasonable accommodations, significant risk of transmission of the disease would still exist; therefore, conditions and practices to which seropositive prisoners were subjected did not constitute discrimination against them as handicapped individuals in violation of the Rehabilitation Act. On appeal the case was remanded for further consideration. (Alabama Prison)

U.S. Appeals Court
SUICIDE
SEGREGATION

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

U.S. District Court
PROTECTIVE
CUSTODY

Madden v. Kemna, 739 F.Supp. 1358 (W.D. Mo. 1990). Consolidated cases were brought by twenty-five prisoners from Colorado who had been transferred to Western Missouri Correctional Center from their home state, pursuant to a contract for imprisonment there. They asserted that they were being held in a protective custody segregation unit, as requested by them, but without being afforded the same general privileges provided to the inmates in the general prison population as generally

mandated by Missouri prison regulations. The district court found that the Missouri prison violated the protected liberty interest of the Colorado prisoners by treating the prisoners substantially different from Colorado prisoners; the Colorado prisoners were in the Missouri prison pursuant to a contract, the prison's own regulation required the substantial equality of prisoners and created a liberty interest, and the prison failed to show any security needs for affording Colorado prisoners fewer privileges than Missouri prisoners. The prison was ordered to comply with its own regulation requiring substantial equality of privileges among the prisoners. (Western Missouri Correctional Center, Cameron)

U.S. Appeals Court
CLASSIFICATION
DUE PROCESS
SEGREGATION

McCord v. Maggio, 910 F.2d 1248 (5th Cir. 1990). An inmate at the state penitentiary brought a civil rights action for prison officials' alleged violation of his eighth amendment rights in connection with conditions of confinement and with his classification for imprisonment in a single cell. The U.S. District Court entered a judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming in part, reversing and remanding in part, found that the civil rights claim arising from the conditions of the inmate's confinement, including his alleged placement in an unlighted, windowless cell into which water and human sewage was allegedly allowed to seep, would be remanded to a magistrate for additional findings of fact, but the inmate was not denied procedural due process by his initial and ongoing confinement in a closed cell, where a lockdown review board had considered the inmate's entire record, including the need to protect him from reprisals or harm from other inmates, in ordering assignment, and where the inmate's classification was reviewed every 90 days at a reclassification board hearing of which the inmate was given prior notice. (Louisiana State Penitentiary)

U.S. District Court
AIDS
SEPARATION

Portee v. Tollison, 753 F.Supp. 184 (D.S.C. 1990), affirmed, 929 F.2d 694. State prisoners filed a civil rights action against the South Carolina Department of Corrections and individual defendants, claiming that a prison policy did not adequately protect them from the risk of the Acquired Immune Deficiency Syndrome (AIDS) virus. The defendants moved for summary judgment. The U.S. District Court found that the Department of Corrections practices and policies governing the admission of prisoners and handling of prisoners with AIDS did not violate the Eighth Amendment prohibition against cruel and unusual punishment. The court found that prisoners who "follow the rules" are "not in significant danger" of contracting AIDS, and the decisions to not test all inmates and to integrate HIV-carriers into the general population were therefore not "deliberate indifference" to other inmates' serious medical needs. (Central Correctional Institution, Columbia, South Carolina)

U.S. Appeals Court
PRETRIAL
DETAINEES
FAILURE TO
PROTECT

Redman v. County of San Diego, 896 F.2d 362 (9th Cir. 1990). A pretrial detainee who was raped during confinement brought a Section 1983 action against the sheriff, the supervisor of the detention facility, the second in command at the facility, the shift supervisor, the station deputy, and the county. The U.S. District Court directed a verdict in favor of the defendants, and the detainee appealed. The court of appeals affirmed the lower court decision and found that the jail officials were not deliberately indifferent to the detainee's due process right to personal security. Transferring the 18-year-old pretrial detainee from the "young and tender" unit to a cell with a homosexual and investigating an alleged rape of the detainee by questioning him in front of the cellmate and other inmates was not "deliberate indifference" to the detainee's due process right to personal security, even though the jail officials knew that the cellmate had a history of trying to coerce others into sexual favors. The knowledge about the cellmate and the detainee's profile merely gave jailors a suspicion of a possible attack. (San Diego County's South Bay Detention Facility, California)

U.S. Appeals Court
DUE PROCESS
SEGREGATION

Russ v. Young, 895 F.2d 1149 (7th Cir. 1990). A prisoner brought a Section 1983 action alleging that prison administrators had violated his due process rights in transferring him to a temporary lockup status. The U.S. District Court dismissed the defendants from the lawsuit, and the prisoner appealed. The appeals court affirmed the decision, finding that the inmate did not have a federal liberty interest in remaining in the general prison population. There is no constitutional right from the due process clause, in itself, to a particular placement within a single institution. A state regulation pertaining to the temporary lockup of inmates did not place substantive limits on official discretion sufficient to establish the prisoner's liberty interest in staying out of temporary lockup, even though the regulation offered prison officials guidelines as to when a prisoner might be placed in temporary lockup confinement. The regulation employed discretionary rather than mandatory language. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
DUE PROCESS
SOLITARY
CONFINEMENT
DISCIPLINARY
PROCEDURES

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

U.S. District Court
CLASSIFICATION

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

U.S. District Court
CLASSIFICATION
DUE PROCESS
SEGREGATION

Thomas v. Zelez, 731 F.Supp. 1462 (D.Kan. 1990). An inmate brought a civil rights action alleging his constitutional rights were violated by the reduction in his custody level during an investigation at the correctional facility. On the defendants' motion for summary judgment, the district court found that the inmate, identified as a leader in a white supremacist group, received the full benefit of due process rights when he was moved from a medium security to a maximum security area in response to the investigation into supremacist harassment of black inmates. According to the court there is no constitutional requirement that prisons provide activities for segregated inmates. Any defects in the custody reduction board proceedings were cured when the decision of that body was nullified and all permanent records were removed from the inmate's file; and the inmate, who was dishonorably discharged from the U.S. Army, stated no equal protection claim in connection with the rejection of his request for administrative relief from segregation under the provision of the Uniform Code of Military Justice which was only available to members of the armed forces. (United States Disciplinary Barracks, Fort Leavenworth, Kansas)

U.S. District Court
AIDS
FAILURE TO
PROTECT

Welch v. Sheriff, Lubbock County, Tex., 734 F.Supp. 765 (N.D.Tex. 1990). An inmate brought a civil rights action against jail personnel for allegedly placing him in the same cell as an inmate who had tested positive for Acquired Immune Deficiency Syndrome (AIDS) in an alleged violation of constitutional rights. The defendants moved for summary judgment. The district court, granting the motion, found that the jail authorities did not violate the inmate's constitutional rights simply by placing him in the same cell as an inmate who had tested positive for AIDS, absent any allegation or proof of sexual contact among the inmates or other activities that could pose serious risk of transmission of AIDS, such as sharing of needles for intravenous drug use. Further, in this instance, the other inmate's positive AIDS test turned out to be a "false positive" and later tests designed to confirm it showed that he did not, in fact, have AIDS. (Lubbock County Jail, Texas)

U.S. District Court
AIDS
SPECIAL NEEDS
TRANSFER

Wilson v. Franceschi, 735 F.Supp. 395 (M.D. Fla. 1990). An inmate brought a pro se action under Section 1983 against the physician at a correctional institution and the correctional institution's chief classification specialist, arising from the alleged denial of medical care. The district court found that the physician was qualifiedly immune from the suit in connection with the inmate's claim that the delay in receiving the drug zidovudine (AZT) for the treatment of the inmate's early acquired immune deficiency syndrome (AIDS)-related complex (ARC) symptoms constituted cruel and unusual punishment. At the time, the efficacy of treating early ARC patients with AZT was not known. The chief classification specialist at the correctional institution was not responsible for medical transfers and, thus, was immune from action by the inmate alleging that the delay in transferring him to a facility for the treatment of his early acquired immune deficiency syndrome (AIDS)-related complex symptoms constituted cruel and unusual punishment under the eighth amendment. The inmate's itching does not constitute a "serious medical need" such that the failure to treat it constitutes cruel and unusual punishment within the meaning of the eighth amendment. (Florida Department of Corrections)

1991

U.S. District Court
CLASSIFICATION
DUE PROCESS

Beardsley v. Moore, 765 F.Supp. 560 (E.D. Mo. 1991). A state prisoner brought a civil rights suit against state prison officials, alleging deprivation of his liberty interest regarding his classification within the prison. The district court found that the prisoner did not have a liberty interest in being classified among the general prison population, so as to assert a due process violation in connection with restrictive classifications imposed upon him, and the due process rights of the prisoner were not violated by placement in a more restrictive classification based on five minor violations. While the Inmate Rule Book provided for reduction of status only after accumulating six or more minor violations, the Rule Book did not provide policies or procedures regarding classification but rather appeared to govern the lifestyle of inmates while incarcerated. (Missouri State Penitentiary)

U.S. District Court
AIDS

Casey v. Lewis, 773 F.Supp. 1365 (D. Ariz. 1991), reversed, 4 F.3d 1516. A class action suit was brought by prisoners challenging certain prison policies. The district court found that a policy prohibiting assignment of prisoners to food services who test HIV positive violated the Rehabilitation Act. The district court found that although a significant risk of transmission of the AIDS virus could justify exclusion of the infected person from a job for which he or she is otherwise qualified, based on reasonable medical judgments, there is no significant risk of transmitting the HIV disease except through: (1) intimate sexual contact with an infected person; (2) invasive exposure to contaminated blood or certain other bodily fluids; or (3) perinatal exposure. HIV-positive prisoners are "handicapped" within the meaning of Section 504 of the Rehabilitation Act. As such, officials must make an individual determination that each HIV-positive prisoner presents a significant risk of transmitting the virus if he or she worked in food services. The appeals court vacated the decision, finding that the plaintiffs lacked standing. (Arizona Department of Corrections)

U.S. District Court
SPECIAL NEEDS

Crosby v. Reynolds, 763 F.Supp. 666 (D. Me. 1991). A female prisoner at a county jail brought a Section 1983 action against jail officials for allegedly violating her privacy rights by placing her in the same cell as a transsexual male prisoner. On the defendants' motion for summary judgment, the district court found that correctional officials were entitled to qualified immunity on the inmate's claims. Expert medical opinion informed the jail officials that housing the transsexual inmate in the female population best satisfied the inmate's unique psychological needs and there was no risk to the female inmates. The officials were notified that the inmate, who had received hormonal treatments and developed breasts, but had not yet undergone a sex change operation, would not be safe, physically or psychologically if placed with male inmates. According to the court, reasonable officials in their shoes would not understand that what they did violated the constitutional rights of the plaintiff, therefore, the defendants were entitled to qualified immunity on the plaintiff's charge that her constitutional right to privacy was invaded. (Penobscot County Jail, Maine)

U.S. Appeals Court
SUICIDE

Dobson v. Magnusson, 923 F.2d 229 (1st Cir. 1991). The estate of a prisoner brought a suit against an officer of a state prison for damages resulting from the prisoner's suicide. The U.S. District Court entered summary judgment in favor of the defendant, and the estate appealed. The appeals court found that the prison officer's failure to put a suicide watch on the prisoner when the prisoner returned from a disciplinary board hearing where he was ordered to serve time in segregation was not deliberate indifference where the officer was given no history of suicidal tendencies on the part of the prisoner. Moreover, any failure on the officer's part to order the watch became *res inter alios* in light of fact that the prisoner was already on a watch because of the possibility of self-injury, not because of any perceived threat of suicide. The passage of 45 minutes between the correction officer's successive checks on the prisoner, who had been placed on a 15-minute watch because of the possibility of self-injury, did not amount to deliberate indifference. A psychologist, whose notes the officer had read, expressly rejected the threat of suicide. (Maine State Prison)

U.S. Appeals Court
CLASSIFICATION
TRANSFER

Grayson v. Rison, 945 F.2d 1064 (9th Cir. 1991). A former federal prisoner brought an action against three prison officials, seeking damages for an allegedly unlawful transfer between prison facilities. The U.S. District Court granted summary judgment for the officials based on a finding of qualified immunity, and the former prisoner appealed. The court of appeals found that the transfer of the prisoner from a less restrictive section to a more restrictive section did not deny the prisoner due process, and the federal prisoner was not entitled to notice and a hearing. Placement was a direct result of the prisoner's holdover status, and the federal prisoner, transferred to the institution for civil depositions, was not entitled to memorandum and formal review otherwise required. The transfer did not deny the prisoner due process, although the transfer from one section to another was made without

procedural safeguards. When prison officials have a legitimate administrative authority, such as discretion to move inmates from prison to prison or from cell to cell, the due process clause imposes few restrictions on the use of that authority, regardless of what motives are claimed to exist for the transfer. (Terminal Island Federal Correctional Institution, California)

U.S. District Court
SEPARATION

Harding v. Jones, 768 F.Supp. 275 (E.D. Mo. 1991). A prisoner brought a Section 1983 action against the superintendent of a prison, two guards, and a former caseworker. The district court found that prison officials did not violate the Eighth Amendment rights of the prisoner by allowing him and an inmate with whom he had a dispute to remain in the general prison population; although the prisoner was informed of the availability of protective custody, the prisoner explicitly rejected it. This made his decision to remain in the general prison population voluntary. (Moberly Correctional Center, Missouri)

U.S. Appeals Court
AIDS

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, assuming that prisoners who had tested positive for HIV enjoyed a constitutionally protected privacy interest in preventing non-consensual disclosure of their HIV-positive diagnoses, such disclosure, as a result of the Alabama DOC policy of uniformly segregating HIV-positive inmates from the general prison population, did not violate such prisoners' privacy rights as any such right was outweighed by legitimate penological interests of the DOC. (Alabama Department of Corrections)

U.S. District Court
DUE PROCESS
TRANSFER
CLASSIFICATION
CRITERIA

Klein v. Pyle, 767 F.Supp. 215 (D. Colo. 1991). A pro se inmate brought a Section 1983 action against prison officials alleging a violation of due process and equal protection rights. The prison officials moved to dismiss for failure to state a claim. The district court found that, absent a state-created interest, neither a change in a prisoner's security classification nor a prisoner's transfer from one prison to another implicates a liberty interest within the meaning of the due process clause. However, it was improper to dismiss the prisoner's civil rights complaint based on the prisoner's placement in a segregation unit of the medium security facility before correctional officials had answered the prisoner's allegations that the segregation served no valid administrative purpose and the record failed to disclose whether the prisoner was placed in segregation for administrative or supervisory reasons. In addition, the prisoner stated a cause of action based on denial of equal protection by alleging that his case manager told him that several prisoners with similar sentences were housed in the medium security prison, where, under the Colorado Department of Corrections regulation the prisoners received a notice of the segregation and a hearing but the prisoner had received neither. Under the department regulation, prisoners and their case managers were also allowed to participate in the reclassification process but the prisoner and his case manager had not been allowed to do so. (Colorado Department of Corrections)

U.S. District Court
AIDS
SEGREGATION

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 segregation of the inmate disclosed confidential HIV-related information about her to nonmedical staff in violation of New York Public Health Law in addition to a violation of her Constitutional right to privacy. The segregation policy was not rationally related to protection of the general inmate population from accidental exposure to the virus, particularly in light of the fact that many unknown HIV carriers were likely to be integrated into the general population at any time. The district court found that the segregation of the inmate in a ward housing suicidal and psychologically unstable inmates did not violate the Eighth Amendment. The inmate was housed with inmates who graphically described their horrible crimes, were suicidal, who demonstrated severe psychiatric problems, and who were in a state of perpetual trauma, and while the conditions in the ward were severe, they were not sufficiently traumatic. (Eric County Holding Center, New York)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
SEGREGATION

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. Appeals Court
HOMOSEXUALS

Purvis v. Ponte, 929 F.2d 822 (1st Cir. 1991). A pro se inmate brought an action against prison officials alleging a violation of the Eighth Amendment based on alleged deliberate indifference to the need for protection from inmate threats and assaults. The U.S. District Court dismissed the complaint as frivolous, and the inmate appealed. The court of appeals found that the inmate failed to state an Eighth Amendment claim. The prison inmate's allegations that cellmates had exhibited unspecified general "hostility" toward homosexuals, had assaulted a corrections officer, had refused to live with blacks, or exhibited bizarre behavior were not, standing alone, sufficient to establish that the inmate was subject to an unreasonable risk of harm in violation of the Eighth Amendment. (Old Colony Corrections Center, Massachusetts)

U.S. Appeals Court
AIDS

Robbins v. Clarke, 946 F.2d 1331 (8th Cir. 1991). A prisoner brought a Section 1983 action alleging conspiracy to conceal the identity of prisoners testing positive for human immunodeficiency virus (HIV), cause of AIDS (Acquired Immune Deficiency Syndrome), failure to take precautions to protect healthy prisoners from exposure to HIV, and failure to take precautions to protect uninfected prisoners from exposure to hepatitis and tuberculosis. The U.S. District Court dismissed the complaint, and the prisoner appealed. The court of appeals found that the district court decision that prison conditions, including the presence of HIV-positive prisoners in the general prison population, was not cruel and unusual punishment collaterally estopped litigation of the issue that the Eighth Amendment was violated by involuntary and unprotected exposure to prisoners testing positive for HIV, and cause of AIDS as the issues were the same. Furthermore, the district court decision that evidence failed to show higher levels of infectious and contagious diseases among inmates collaterally estopped litigation of the claim that the prisoners' rights were violated by the failure to make an effort to protect them from exposure to hepatitis and tuberculosis. (Medium Security Unit, Nebraska State Penitentiary)

U.S. District Court
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)

U.S. District Court
CLASSIFICATION
RACIAL
DISCRIMINATION
TRANSFER

Stuck v. Aikens, 760 F.Supp. 740 (N.D. Ind. 1991). An inmate sued prison officials, claiming that his transfer to a prison with greater security and restrictions violated his constitutional rights. The officials moved for summary judgment. The district court found that the inmate had no protectable interest in his security classification while in confinement. In addition, the inmate failed to state a claim of invidious discrimination under Sections 1985 and 1986 and the Thirteenth Amendment with respect to his transfer to a prison with greater security and restrictions, as he did not claim to be a member of a racially protected group, and his status as an inmate was not a substitute for evidence of such a class membership. It was also found that the transfer did not violate his right under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment. (Indiana State Prison)

U.S. Appeals Court
GUIDELINES
REDUCTION

U.S. v. Gonzalez, 945 F.2d 525 (2nd Cir. 1991). A defendant was convicted of importing cocaine and the court departed downward from a minimum term proscribed by the sentencing guidelines. As a result, the government appealed. The court of appeals found that the trial court's conclusion that the defendant's overall appearance and demeanor made him unusually vulnerable to physical attack warranting a downward departure from the sentencing guidelines was not clearly erroneous. The defendant was extremely small and feminine looking and had an appearance of a 14 or 15-year-old making him unusually susceptible to prison abuse, even though the defendant was neither gay nor bisexual. (Federal Bureau of Prisons)

U.S. 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
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
SEPARATION
TRANSFER
LENGTH OF
SEGREGATION

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 Corr. Center)

U.S. Appeals Court
CLASSIFICATION
SEPARATION
FAILURE TO
PROTECT

James v. Milwaukee County, 956 F.2d 696 (7th Cir. 1992). An inmate who was assaulted by another inmate brought a Section 1983 action against a county and prison official alleging a violation of the Eighth Amendment. The U.S. District Court entered judgment for the county and prison official, and the inmate appealed. The court of appeals found that the county's inmate classification system was not cruel and unusual punishment under the Eighth Amendment; there was no evidence the defendants were on notice of an impending risk of harm to the inmate as a consequence of housing parole violators together with probation violators. (Milwaukee County House of Correction, Wisconsin)

U.S. District Court
CLASSIFICATION
CRITERIA

Jensen v. Gunter, 807 F.Supp. 1463 (D.Neb. 1992). Nebraska inmates brought class actions under a federal civil rights statute, alleging that the practice of double celling violated the Eighth Amendment, and that the penitentiary's policy relating to the inmate liability for contraband in a double cell violated the Fourteenth Amendment's due process clause. The court found that random placement of new inmates in double cells under volatile conditions that existed in the penitentiary's main housing units was not a reasonable response to the persuasive risk of harm to those inmates, and therefore such placement violated the Eighth Amendment. Information gathered and compiled during the initial intake of inmates into state prisons was not considered in the placement of new inmates into double cells, and such information could be of valuable assistance in predicting compatibility of cellmates. (Nebraska State Penitentiary)

U.S. Appeals Court
AIDS
SEGREGATION

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. District Court
AIDS
SEGREGATION

Muhammad v. U.S. Bureau of Prisons, 789 F.Supp. 449 (D.D.C. 1992). An inmate sued the Bureau of Prisons, seeking writ of mandamus compelling the immediate removal of all prisoners from the general inmate population who either have Acquired Immune Deficiency Syndrome (AIDS), or have tested positive for the HIV virus, and the Bureau moved to dismiss. The U.S. District Court found that the inmate was not entitled to a writ of mandamus as the weight of authority on the issue indicated that the inmate was not entitled to relief in the form of segregation of such prisoners, he failed to show he was entitled to the extraordinary remedy of mandamus. (United States Bureau of Prisons)

U.S. District Court
AIDS
SEPARATION

Myers v. Maryland Div. of Correction, 782 F.Supp. 1095 (D. Md. 1992). Inmates brought an action against the Maryland Division of Correction, regarding a threat of infection with the Human Immunodeficiency Virus (HIV) and of spread of Acquired Immune Deficiency Syndrome (AIDS) in prison. On motions for summary judgment, the U.S. District Court found that the policies and programs adopted by Maryland Division of Correction to combat the spread of HIV and AIDS did not violate the right of HIV negative inmates to be free from cruel and unusual punishment to the extent that they did not require mandatory testing of all inmates and did not consider an inmate's HIV status in making housing and work assignments; although pervasive risk of harm was present, there was no showing of deliberate indifference. (Maryland Division of Correction)

U.S. Appeals Court
DUE PROCESS
SEGREGATION
DISCIPLINE

Nicholson v. Moran, 961 F.2d 996 (1st Cir. 1992). An inmate brought an action alleging that he was deprived of his constitutional rights in violation of Section 1983 and certain provisions of Rhode Island law. The U.S. District Court dismissed the complaint and appeal was taken. The court of appeals, reversing and remanding, found that the inmate, by way of rules resulting from a consent decree specifying the procedure to be used by Rhode Island correctional institutions with regard to inmate disciplinary actions, had a state-created liberty interest under the due process clause in remaining in the general prison population and, thus, the inmate's complaint that he was sentenced to punitive segregation for providing false information in connection with a complaint he filed stated a claim under Section 1983. (Rhode Island Adult Correctional Institute)

U.S. District Court
CLASSIFICATION
CRITERIA
HOMOSEXUALS
TRANSFER

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

1993

U.S. District Court
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. Appeals Court
AIDS
SEGREGATION

Camarillo v. McCarthy, 998 F.2d 638 (9th Cir. 1993). A former state inmate who was human immunodeficiency virus (HIV)-positive brought a Section 1983 action alleging that his transfer to a housing unit for HIV-positive inmates violated his constitutional rights. The U.S. District Court denied the officials' motion for summary judgment, and the official appealed. The appeals court, reversing and remanding, found that the officials were entitled to qualified immunity from liability on the claim that the transfer to the housing unit violated the inmate's constitutional rights of equal protection, privacy, due process, freedom from cruel and unusual punishment, and freedom of association, as any such rights that the inmate had were not clearly established at the relevant time. (California State Prison)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
POLICY/
PROCEDURE

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. Appeals Court
CLASSIFICATION
CRITERIA
TRANSFER

Crane v. Logli, 992 F.2d 136 (7th Cir. 1993), cert. denied, 114 S.Ct. 245. A prisoner sued prison officials under Section 1983 for violation of his due process rights. The U.S. District Court dismissed the complaint, and the prisoner appealed. The appeals court found that the prisoner's continued incarceration in a maximum security prison, after reversal of his conviction for murder but before the reviewing court issued its mandate, did not violate due process, as he did not have a liberty interest in the type of prison for his incarceration. He continued to be a convicted prisoner and had not become a "pretrial detainee." Furthermore, the decision of Illinois Department of Correction officials to hold the prisoner at the maximum security prison until the Supreme Court issued its mandate following reversal of the conviction did not violate any of the prisoner's constitutional rights. The decision was a management decision within the scope of the officials' discretion. (Joliet Correction Center, Illinois)

U.S. District Court
AIDS

Goss v. Sullivan, 839 F.Supp. 1532 (D.Wyo. 1993). An inmate who had been attacked by an inmate infected with HIV (Human Immunodeficiency Virus) brought a civil rights action against various officials claiming violation of the Eighth and Fourteenth Amendment rights. The district court found that the complaint failed to state a claim for violation of equal protection and the plaintiff inmate failed to establish a requisite deliberate indifference to a pervasive risk of harm necessary to show a violation of the Eighth Amendment. (Wyoming State Penitentiary, Rawlins)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
TRANSFER

Harrison v. Raney, 837 F.Supp. 875 (W.D. Tenn. 1993). A prison inmate brought a civil rights action asserting claims that he was transferred and reclassified without a hearing. On motion of defendants for summary judgment, the district court found that Tennessee Department of Corrections (TDOC) regulations did not create a liberty interest requiring state officials to afford any due process under the Fourteenth Amendment before either reclassification or transfer of inmates. Even if the regulations required hearings to follow certain procedures, they lacked any mandatory language that would require the warden to base a decision on any particular criteria, and unlimited discretion was explicitly conferred on the warden. Even if some types of transfers of inmates required security reclassification and due process protections, population management transfers did not, under the Tennessee regulation. (Lake County Regional Correctional Facility, Tiptonville, Tennessee)

U.S. District Court
AIDS

Johnson v. U.S., 816 F.Supp. 1519 (N.D. Ala. 1993). An inmate brought an action against the Federal Bureau of Prisons and prison officials, alleging violation of his Eighth Amendment right against cruel and unusual punishment. On the defendants' motion for summary judgment, the district court, adopting a report and recommendation of a U.S. Magistrate Judge, found that the inmate failed to show an Eighth Amendment violation concerning his being housed in the same cell with an inmate who was dying from acquired immune deficiency syndrome (AIDS). All examples listed as means by which the inmate feared he may have contracted AIDS were based on unsubstantiated fears and ignorance. In addition, the inmate presented no facts or allegations supporting an inference of deliberate indifference to his serious medical needs or a culpable state of mind on the part of the prison officials. (Federal Correctional Institute, Talladega, Alabama)

U.S. District Court
AIDS

Marcussen v. Brandstat, 836 F.Supp. 624 (N.D. Iowa 1993). An inmate filed a Section 1983 civil rights action against a warden of a correctional facility and a lieutenant and nurse employed at the facility. He alleged that his constitutional rights were violated when prison officials assigned a HIV-positive (Human Immunodeficiency Virus) inmate to his cell and allowed that inmate to use his toiletries. The defendants filed a motion for summary judgment. The district court found that the defendants were entitled to summary judgment on the inmate's allegations that he was exposed to the risk of contracting AIDS from the use of his drinking cup and cigarette roller by the allegedly HIV-positive inmate because the possibility of transference of AIDS through these means was too remote. The defendants were granted summary judgment on the inmate's claim that simply housing him with an allegedly HIV-positive inmate violated his constitutional rights. The defendants were granted summary judgment on the inmate's claim of exposure to pervasive risk of harm from allowing other inmates to use sharp objects, such as a razor, that could cause blood-to-blood transmission of HIV, because rules were in place at the correctional facility prohibiting behavior by inmates that could result in exposure to AIDS or HIV and stating that inmates were responsible for their personal property. The defendants were granted summary judgment on the basis of qualified immunity since the officials' behavior was in line with standards stated in existing precedent, and so could not have violated the clear contours of any of the inmate's rights. (North Central Correctional Facility, Rockwell City, Iowa)

U.S. Appeals Court
LIBERTY INTEREST
SEGREGATION

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
CLASSIFICATION
DUE PROCESS

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 due process when he was given a Grade B classification. The inmate appealed. The appeals court found that the inmate's due process rights were not violated by the prison classification committee's administrative decision to reclassify him. The inmate could be reclassified from Grade A to Grade B for possessing inmate manufactured alcohol and being affiliated with a prison gang. (San Quentin State Prison)

U.S. Appeals Court
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. Supreme Court
TRANSSEXUAL

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

U.S. District Court
SEPARATION

Galvan v. Carothers, 855 F.Supp. 285 (D.Alaska 1994). A female inmate who was placed on an all male wing of a prison brought an action against prison officials, alleging violations of her constitutional rights. The officials moved for summary judgment. The district court granted the motion, finding that Alaska regulations and prison policies did not give the inmate a liberty interest in her right to classification hearings for purposes of her procedural due process claim. Also, the female inmate's right not to be housed on the

all male wing was not clearly established at the time of the alleged wrongful conduct by officials for purposes of qualified immunity. (Lemon Creek Correctional Center, Alaska)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST

Griffin-El v. Delo, 34 F.3d 602 (8th Cir. 1994). An inmate brought a Section 1983 action against a prison superintendent, alleging that his due process rights were violated when the superintendent reduced him to medium custody before referring the matter to the classification committee for recommendation. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that the superintendent's failure to wait for a recommendation did not violate due process. Although the inmate had a protected liberty interest in his classification status, the inmate was given notice and an opportunity to speak and present witnesses before the adjustment board. (Potosi Correctional Center, Mineral Point, Missouri)

U.S. District Court
RACIAL
DISCRIMINATION

Hill v. Davidson, 844 F.Supp. 237 (E.D. Pa. 1994). The district court found that an indigent inmate, who claimed that he was denied employment in the prison because of his race, presented a claim of arguable merit. However, the inmate did not show sufficient "special circumstances" to warrant appointment of counsel. (Pennsylvania)

U.S. District Court
FAILURE TO
PROTECT
POLICY/
PROCEDURE

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

U.S. Appeals Court
CLASSIFICATION
LIBERTY INTEREST
REGULATIONS

Slezak v. Evatt, 21 F.3d 590 (4th Cir. 1994) U.S. cert. denied 115 C.Ct. 235. Inmates in the South Carolina prison system sued prison officials under Section 1983 alleging that their constitutional rights were violated by their security classifications. The U.S. District Court dismissed the suit and the inmates appealed. The appeals court, affirming the decision, found that state statutes creating and defining the power of the South Carolina Department of Corrections did not create a liberty interest in custody or security classifications protectible under the due process clause. Furthermore, a consent decree settling a class action suit brought by inmates to rectify prison conditions in South Carolina did not create a protected liberty interest with respect to custody and security classifications for purposes of Section 1983. The operational classification regulations which the state prison officials put in place, with prior court approval, pursuant to obligations imposed by the consent decree, did not create a protected liberty interest in an inmate's security and custody classifications. (Kirkland Correctional Institution, South Carolina)

U.S. Appeals Court
RACIAL
DISCRIMINATION
SEGREGATION

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
PRETRIAL
DETAINEES
SEPARATION
SPECIAL NEEDS

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 prison officials' decision to hold the pretrial detainee in restricted housing was justified by legitimate institutional security concerns. The detainee's conduct raised serious concerns about the suitability of his release to the general population when he engaged in a hunger strike which caused his transfer from a restricted housing unit to a psychiatric observation room. It suggested possibilities the detainee might be seeking to harm himself or to disrupt institutional operations, and prison officials received warnings from law enforcement officials about the security threat posed by the detainee. (State Correctional Institution, Dallas, Pennsylvania)

1995

U.S. Appeals Court
AIDS

Anderson v. Romero, 72 F.3d 518 (7th Cir. 1995). An inmate who was infected with the human immunodeficiency virus (HIV) sued prison officials alleging violation of his constitutional right of privacy and the Illinois AIDS Confidentiality Act. The district court denied the officials' motion to dismiss and they appealed. The appeals court found that the inmate's claim

regarding disclosure of his HIV status to other inmates or prison staff and other measures taken against him on the basis of his HIV status was barred by the doctrine of official immunity. The court noted that HIV-positive inmates can be segregated from the rest of the population, in view of the prevalence of HIV in prisons, the amount of violence and homosexual intercourse. (Stateville Penitentiary, Illinois)

U.S. District Court
SEX OFFENDERS
FAILURE TO PROTECT

Benji v. Broome County N.Y., 887 F.Supp. 395 (N.D.N.Y. 1995). A state inmate filed pro se federal civil rights claims against local and county officials alleging failure to adequately protect his personal security. The court found that the inmate raised triable issues of fact for his claim that officials were deliberately indifferent to his safety. Another inmate had threatened to kill the plaintiff because of sex crimes charged against him; the plaintiff was moved to another part of the facility and other inmates were told that the plaintiff was charged with burglary. The plaintiff sent three notes about "potential trouble" to the facility main desk and shortly thereafter he was assaulted by another inmate, knocked unconscious for an hour, and suffered injuries to his ear, eye and trachea. The inmate had also received a threatening letter from "vigilantes" in the facility. (Broome County Correctional Facility, New York)

U.S. District Court
TRANSFER
SPECIAL NEEDS

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 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
PROTECTIVE
CUSTODY

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
CUSTODY LEVEL
RACIAL
DISCRIMINATION
TRANSFER

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
AIDS

Fuller v. Rich, 925 F.Supp. 459 (N.D.Tex. 1995). An inmate brought a suit against employees of the Bureau of Prisons alleging violation of his Eighth Amendment rights. The district court granted the defendants' motion to dismiss, finding no constitutional violation. The court held that the inmate's job reassignment from food preparation to a dishroom was rationally related to the legitimate penological purpose of protecting the inmate from possible harm at the hands of other inmates, where other inmates made derogatory comments to prison officials regarding the inmate's homosexuality and there were rumors the inmate was infected with the HIV virus. The court noted that compelling prison inmates to fulfill work requirements does not violate an inmate's constitutional rights. (Federal Correctional Institution, Seagoville, Texas)

U.S. Appeals Court
SMOKING
SEPARATION

Goffman v. Gross, 59 F.3d 668 (7th Cir. 1995). A state prison inmate filed a § 1983 action against correctional officers alleging deliberate indifference to his immediate medical needs. The district court entered judgment for the officers and the appeals court affirmed. The appeals court found that the inmate failed to establish that his exposure to his cellmate's cigarette smoke and the officers' refusal to assign him a nonsmoking cellmate constituted deliberate indifference. The court noted that the sole testifying physician offered the opinion that because the inmate was cured of lung cancer after the prior surgical removal of a lung, cigarette smoke

affected him no more than any other prisoner. (Menard Correctional Center, Illinois)

U.S. District Court
PROTECTIVE
CUSTODY
DUE PROCESS

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. Appeals Court
FAILURE TO
PROTECT
PRETRIAL
DETAINEE
SEPARATION

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

U.S. District Court
RECLASSIFICATION
CUSTODY LEVEL

Hall v. Griego, 896 F.Supp. 1043 (D.Colo. 1995). An inmate brought an action against prison officials alleging violation of his rights under the Religious Freedom Restoration Act (RFRA). The district court found that the inmate stated a claim for violation of his rights under RFRA in being prohibited from wearing headgear and being transferred after conducting religious services. The court held that material questions of fact precluded summary judgment on whether the inmate's transfers were retaliatory. The court noted that if a second correctional facility offers fewer or inferior opportunities for religious practice, the transfer of an inmate to that facility may be punitive, so as to be impermissible retaliation. The court found that reclassification of the inmate's security status did not trigger constitutional due process. (Colorado State Penitentiary)

U.S. District Court
CUSTODY LEVEL
TRANSFER
LENGTH OF
SEGREGATION

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
CUSTODY LEVEL
REGULATIONS

Knox v. Lanham, 895 F.Supp. 750 (D.Md. 1995). A prisoner serving a life sentence with the possibility of parole brought an action against state corrections officials and parole commissioners alleging constitutional violations and seeking injunctive, declaratory, and monetary relief. The district court held that a corrections directive that moved inmates serving life sentences to higher security, combined with the parole commission's refusal to recommend parole unless inmates were on active work release--which required lower security classification, constituted retroactive "punishment" in violation of the ex post facto clause. The court noted that an unwritten policy of the parole commission requiring inmates to be on active work release was "law" for ex post facto purposes where the state had not disavowed the policy nor could the policy be deemed solely interpretive. The court found, however, that the removal of inmates from family leave and work release programs, their transfer from prerelease facilities, and their increased security levels did not violate equal protection. (Maryland Division of Corrections)

U.S. District Court
SEPARATION
TRANSSEXUAL

Long v. Nix, 877 F.Supp. 1358 (S.D. Iowa 1995). A prisoner claiming to be a transsexual brought a Section 1983 action against prison officials seeking to have appropriate living conditions and medical treatment provided for him. The district court found that the denial of desired accommodations and medical treatment did not constitute cruel and unusual punishment. The prisoner's transsexualism tendencies did not constitute a sufficient gender identity disorder to create a serious medical need for which treatment was mandated under the

Eighth Amendment. An experienced physician who examined the prisoner concluded that his desires to cross-dress and anxieties regarding his sexual identity could be controlled by drugs. In addition, the prisoner had not requested a sex change operation and the staff had not shown deliberate indifference to the condition. The court also found that placing the prisoner claiming to be a transsexual in an "inappropriate" facility and denying him desired medical treatment without giving him an opportunity to be heard did not violate his Fourteenth Amendment due process rights. Also, the inmate had no Fourteenth Amendment due process right to a particular prison classification or status. Prison officials were entitled to qualified immunity on the claim by the inmate that he was denied a separate classification to accommodate his needs. Officials did not violate any clearly established constitutional rights of which reasonable prison officials would have known, as the claimant had no right to any particular medical treatment or to be classified in a certain way. (Iowa State Penitentiary)

U.S. District Court
GANGS
SEGREGATION

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 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, Calif.)

U.S. District Court
SEX OFFENDERS

Neal v. Shimoda, 905 F.Supp. 813 (D.Hawai'i 1995). An inmate brought a § 1983 action against prison officials alleging that their labeling of him as a "sex offender" violated his constitutional rights. The inmate had been compelled to participate in a sex offender treatment program, which required the inmate to admit his guilt. The inmate had refused to admit his guilt, affecting his chances for parole and preventing him from being transferred to a minimum security facility. The district court granted summary judgment for the defendants, finding that the inmate had no constitutional liberty interest in a furlough or in freedom from being classified as a sex offender. The court ruled that the prison's policies did not create a protected liberty interest and that placement of the inmate in the prison's sex offender treatment program did not violate equal protection or the Eighth Amendment. The court also found that classifying the inmate as a sex offender, and its affect on the inmate's potential transfer to a minimum security facility and granting of a furlough, were not improper ex post facto laws. The court noted that even if an inmate was not convicted of any sex offense, the state had a legitimate interest in denying untreated sex offenders parole, furlough and minimum security classification based on their high rate of recidivism. The sex offender treatment program was not overbroad by including inmates who engaged in sexual misconduct during the course of nonsexual offenses. Denying the inmate parole or transfer to a minimum custody facility because he refused to admit guilt, which was the first step necessary for completion of the sex offender treatment program, did not violate the inmate's right against self-incrimination as the program was not a proceeding in which the answers could incriminate the inmate in future criminal proceedings. The program's requirement that the inmate not be in denial about his crime did not violate his Fifth Amendment right to be free from compelled testimony in light of the recognition that rehabilitation, including acceptance of responsibility, is an important sentencing consideration. (Halawa Correctional Facility, Hawai'i)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
SEGREGATION

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 supported 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. Appeals Court
TRANSFER
CUSTODY LEVEL

Pratt v. Rowland, 65 F.3d 802 (9th Cir. 1995). A prisoner filed a § 1983 action against prison officials, alleging their transfer of him from one prison to another and his placement in a double cell was in retaliation for his exercise of his First Amendment rights. The district court granted a preliminary injunction against the inmate, which the appeals court reversed and remanded. The appeals court held that the prisoner failed to establish that the transfer was retaliatory and was not justified by neutral institutional objectives. The prisoner had given an interview to a television network and had been successful in previous lawsuits against prison officials; the interview occurred after the officials had met to transfer the prisoner, and there was no evidence that officials at the new prison who placed the inmate in a double cell were aware of the interview. (Mule Creek Prison, California)

U.S. Appeals Court
TRANSFER
CUSTODY LEVEL

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
DUE PROCESS
LIBERTY INTEREST

Treadwell v. Murray, 878 F.Supp. 49 (E.D. Va. 1995). A state inmate brought a Section 1983 action against supervisory prison personnel and an unknown physician. On a motion to dismiss, the district court found that the state inmate's broad allegations that supervisory prison personnel deprived him of a safe and rehabilitative environment by failing to oversee employees failed to state a Section 1983 claim based on supervisory liability where the inmate's claim focused on the single event of an unknown physician's alleged inappropriate initial medical classification of the inmate. In addition, neither the due process clause nor state statutes or regulations conferred upon the inmate a protected liberty interest in a particular classification. (Field Unit #30, Virginia)

U.S. Appeals Court
LOWER BUNK

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 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)

1996

U.S. Appeals Court
GANGS
TRANSFER

Babcock v. White, 102 F.3d 267 (7th Cir. 1996). A prisoner brought a Bivens claim against prison officials alleging violation of his rights as the result of his retention in administrative segregation and delays in transferring him to another facility. The prisoner had requested a transfer to another prison because of gang members who had threatened to kill him. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded the case. The appeals court held that prison officials did not violate the prisoner's Eighth Amendment rights or due process rights by keeping him in the facility despite his fear of physical harm, because no harm was inflicted and there was no indication of malice on the part of the officials. The court noted that the prisoner had originally requested placement in administrative segregation and therefore could not claim that he was deprived of the opportunity to earn good time credits. But the appeals court found that the prisoner had stated

a claim that the officials had acted in retaliation for the prisoner's right to petition for redress of grievances, precluding summary judgment. The court also held that the officials were not entitled to qualified immunity. In its decision, the appeals court stated "John Babcock is living proof of the dangers that prison gangs pose to inmates, and of the logistical nightmare they create for prison administrators." Babcock had claimed that he was held in administrative segregation for ten months while the officials processed his request to be transferred to another prison. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
DUE PROCESS
SEGREGATION

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. (Lincoln Correctional Center, Nebraska)

U.S. Appeals Court
TRUSTY

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

U.S. District Court
TREATMENT

Douglas v. DeBruyn, 936 F.Supp. 572 (S.D.Ind. 1996). An inmate who was assigned to the "idle unit" of a prison filed an in forma pauperis complaint alleging violation of § 1983. The district court found the complaint to be frivolous within the meaning of the in forma pauperis statute. The court held that the absence of a job, and the absence of vocational, educational and rehabilitation programs does not violate due process. The court noted that while such programs and activities might be useful and productive as a matter of correctional policy, the absence of them does not create any atypical and significant hardships on an inmate in relation to the ordinary incidents of prison life. According to the court, to sustain a viable Eighth Amendment violation the inmate would have to allege that conditions in the idle unit constituted an excessive risk to his health or safety. The court also noted that inmates have no constitutional right to recreation and that only the objective harm that can result from significant deprivation of movement implicates the Eighth Amendment. (Correctional Industrial Complex, Indiana)

U.S. District Court
CELL ASSIGNMENT
CLASSIFICATION
CRITERIA

El Tabech v. Gunter, 922 F.Supp. 244 (D.Neb. 1996). Inmates sued corrections officials alleging that the practice of double celling inmates with random cell assignment violated the Eighth Amendment. The district court ordered remedial measures and the officials appealed; the appeals court remanded the case for certification of findings. On remand, the district court held that evidence was sufficient to find that prison officials actually knew of and disregarded the substantial risk to the safety of inmates posed by making random double cell assignments without the use of classification information and without determining inmate compatibility. The court noted that evidence supported the conclusion that the level of violence at the penitentiary, including violence in double cells, posed a substantial risk of harm to inmates. The court found that remedial measures, such as cell moves, protective custody, or posting staff on a gallery, did not render the decision not to use classification information reasonable. The court found that evidence established that wardens were personally responsible for the failure to use classification information before making cell assignments. (Nebraska State Penitentiary)

U.S. District Court
SEPARATION

Estep v. Dent, 914 F.Supp. 1462 (W.D.Ky. 1996). An inmate moved for a preliminary injunction in this suit against prison officials. The district court denied the motion with regard to the inmate's allegation that he was deprived of opportunities for outdoor exercise while he was housed in a particular housing unit. The court noted that prison officials had already begun to build an outdoor recreation site for that unit and therefore recognized the need and were resolving the problem. The court also denied the motion with regard to the inmate's assertion that his safety was endangered because prison officials allowed inmates of different classifications to exercise together. (Kentucky State Penitentiary)

U.S. District Court
CELL ASSIGNMENT

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

and the change of cells did not violate any constitutionally protected liberty interest because the inmate was not moved to a more restrictive unit. (Sussex Correctional Institution, Delaware)

U.S. District Court
CUSTODY LEVEL
TRANSFER
TREATMENT

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 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. Appeals Court
PROTECTIVE
CUSTODY
GANGS

Jelinek v. Greer, 90 F.3d 242 (7th Cir. 1996). A prison inmate who was seriously injured after he was removed from protective custody filed a civil rights action against prison officials. The district court granted summary judgment to the prison officials and the appeals court affirmed, finding that moving the inmate from protective custody despite his fears of harm from gang members whom he turned in did not show that the prison officials knowingly disregarded a serious risk of harm to the inmate. The prison officials had assigned the inmate a space that was less protected than protective custody, but which was not in the general population. (Menard Correctional Center, Illinois)

U.S. Appeals Court
CELL ASSIGNMENT
SEPARATION

Jensen v. Clarke, 94 F.3d 1191 (8th Cir. 1996). State prison inmates brought a § 1983 action against prison officials alleging that randomly assigning new inmates to double cells substantially increased the risk of violence by cellmates. On remand from an appeal of a remedial plan, the district court ruled that prison officials had actual knowledge of and disregarded a substantial risk of safety to inmates posed by random cell assignments. The appeals court affirmed, finding that the practice was cruel and unusual punishment and noting that this suit was a failure-to-protect case focusing on the manner of assigning new inmates to cells, rather than a prison crowding case. The court found that cruel and unusual punishment was established by evidence that demonstrated the increased number of inmates found guilty of violent offenses, the number of inmates requesting protective custody, and anecdotal evidence of violence from prisoners. The appeals court held that prison officials were entitled to qualified immunity in their individual capacities in light of the diversity of precedent on the need for classifying cellmates. The appeals court found that a district court injunction which required prison officials to use available classification information to determine cellmate compatibility was a proper remedy, after officials chose to take a premature appeal rather than remedy the constitutional violation. (Nebraska State Penitentiary)

U.S. District Court
CLASSIFICATION
SUICIDE
CELL ASSIGNMENT

Johnson v. Hill, 910 F.Supp. 218 (E.D.Pa. 1996). A county prisoner sued officials alleging violation of his rights with respect to housing and medical treatment. The district court dismissed the case, ruling that prisoner placement in housing is a matter of prison administration; the prisoner had claimed he was wrongfully placed in a cell block that housed people accused of murder and rape and people with high bail. The court also found that the inmate did not state a claim for an Eighth Amendment violation with respect to the officials' responses to his thoughts of suicide or to his injuries when he slit his wrists. The court found that the prisoner had not communicated a strong likelihood that he would inflict harm on himself, but rather that there as a mere possibility that harm would occur. Medical care received for self-inflicted injuries to his wrist was adequate where a nurse examined his wrist daily for two weeks following the injury. (Delaware County Prison, Pennsylvania)

U.S. 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. Appeals Court
DISCIPLINE

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The inmate was found to have presented sufficient evidence to preclude summary judgment on his claim that he was deprived of outdoor exercise, in violation of his constitutional rights, while he was confined for six months at the maximum security prison. (Oregon State Prison)

U.S. Appeals Court
CUSTODY LEVEL
TREATMENT

Kerr v. Farrey, 95 F.3d 472 (7th Cir. 1996). An inmate brought a § 1983 action against corrections officials alleging that requiring him to attend religious-based narcotics rehabilitation meetings violated his constitutional rights. The district court granted

summary judgment to the defendants but the appeals court reversed and remanded. The appeals court found that requiring the inmate to attend meetings upon pain of being rated a higher security risk and suffering adverse effects for parole eligibility violated the establishment clause, but that the defendants were entitled to qualified immunity. The court held that under the establishment clause the inmate could not be forced to attend meetings of an organization for narcotics rehabilitation whose program referred to "God, as we understood Him." (Oakhill Correctional Institution, Wisconsin)

U.S. District Court
CUSTODY LEVEL
TRANSFERS

Marshall v. Reno, 915 F.Supp. 426 (D.D.C. 1996). A former federal prisoner who was a Canadian citizen sued federal officials alleging violation of his rights due to the officials' failure to transfer or deport him to his home country and denial of access to release programs which were available to United States citizens. The district court dismissed the case, finding that the prisoner did not have a protected liberty interest in obtaining deportation or transfer, nor did he have a right to be incarcerated at a particular prison or under a certain security classification. Although there was a treaty between the United States and Canada that allowed the transfer of the prisoner, the court noted that this was a discretionary matter which afforded the prisoner no right to a transfer. The Federal Bureau of Prisons program statement that limited access of aliens to community confinement facilities and minimum security facilities did not, according to the court, violate the equal protection clause. (Federal Bureau of Prisons)

U.S. District Court
CUSTODY LEVEL

Meyer v. Federal Bureau of Prisons, 940 F.Supp. 9 (D.D.C. 1996). A federal prisoner brought an action against the Bureau of Prisons and his case manager claiming violation of his rights under the Privacy Act, Freedom of Information Act (FOIA) and the Constitution. The district court held that the prisoner was not entitled under the Privacy Act to amend his custody classification form, since the Bureau's regulations exempted such forms from the Privacy Act's requirements. The court ruled that summary judgment was precluded on the prisoner's FOIA claim due to genuine issues of material fact regarding the existence of documents which were the subject of the prisoner's FOIA request. The court held that the prisoner failed to establish that he had suffered any adverse determination as the result of an allegedly improper rating in his custody classification form. (Fed. Medical Ctr, Rochester, MN)

U.S. District Court
LIBERTY INTEREST
CUSTODY LEVEL

Meyer v. Reno, F.Supp. 11 (D.D.C. 1996). An inmate at a federal prison in Minnesota sued federal authorities, alleging that prison officials and staff conspired to secure detainers against him from local authorities in Florida, barring him from a lower custody classification. The prisoner alleged that these actions negatively affected his programming and resulted in a longer period of incarceration than would have been required if he had been able to attain a lower security status. The district court ruled that it could not exert its authority over some of the defendants. The court also found that the inmate did not have a protected liberty interest under the due process clause, and that prison officials were entitled to qualified immunity. (Federal Bureau of Prisons, Sandstone FCI, Minnesota)

U.S. Appeals Court
RELIGION

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
SMOKING
SEPARATION

Oliver v. Deen, 77 F.3d 156 (7th Cir. 1996). A state prison inmate sued prison officials seeking damages for alleged violation of his Eighth Amendment rights by housing him with smoking cellmates. The district court entered summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the inmate failed to demonstrate that he had a sufficiently serious medical need to implicate the Eighth Amendment or to provide the basis for an award of damages. The court noted that while the inmate was asthmatic and showed signs of discomfort and the prison doctor issued a permit to the inmate to have a nonsmoking cellmate, the inmate's medical records showed that his asthma was mild, that he never required outside hospitalization, and the only evidence of a causal relationship between smoke and the inmate's discomfort was a few general news articles which indicated that smoke could aggravate an asthmatic condition. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
SPECIAL NEEDS
MENTALLY ILL
SEX OFFENDERS

Riddle v. Mondragon, 83 F.3d 1197 (10th Cir. 1996). Twenty-one inmates who had been convicted of sex offenses filed separate civil rights claims against state prison officials, judges, legislators and other state officials. The district court consolidated the actions and granted the defendants' motion to dismiss. The inmates appealed the dismissal of certain claims relating to denial of medical treatment, failure to protect, and equal protection. The appeals court affirmed the lower court decision. The inmates alleged that prison officials failed to include sex offenders

within prison policies concerning minimum custody status, work release, community corrections, and purposeful classification in medium custody. They challenged their classification as violent offenders which made them ineligible for various pre- and post-sentencing programs. The court ruled that these allegations, if proven, would fail to establish that the different treatment afforded to sex offenders was irrational or arbitrary, and that sex offenders did not constitute a suspect class for equal protection purposes. (Southern New Mexico Correctional Facility)

U.S. District Court
CUSTODY LEVEL
RECLASSIFICATION

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. Appeals Court
AIDS

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. District Court
CELL ASSIGNMENT

Webb v. Lawrence County, 950 F.Supp. 960 (D.S.D. 1996). A prisoner sued county correctional officials alleging civil rights violations under § 1983 and common-law negligence, seeking compensatory and punitive damages in connection with a sexual assault by another prisoner. The district court granted summary judgment for the defendants and dismissed the negligence and punitive damages claims. The court ruled that the incarceration of the plaintiff in the same cell as a prisoner who sexually assaulted him did not give rise to a cause of action against corrections officials under § 1983. The court found that the officials had no reason to be aware and were not in fact aware of an excessive risk to the plaintiff's health or safety, noting that the prisoner who committed the assault had assaulted no other prisoners while incarcerated nor had the plaintiff notified officials of his fear of his cellmate or of any assaults until he had been assaulted for four straight days. The court also found that under South Dakota law, the purchase of liability insurance by the county on behalf of prison officials did not waive the officials' statutory immunity from personal liability for negligence. (Lawrence County Jail, South Dakota)

1997

U.S. District Court
BUNKS-LOWER

Boblett v. Angelone, 957 F.Supp. 808 (W.D.Va. 1997). An inmate filed a pro se § 1983 action against prison officials alleging constitutionally inadequate treatment for his knee problems and exposure to environmental tobacco smoke (ETS). The district court granted summary judgment in favor of the defendants. The court found that the Americans with Disabilities Act (ADA) did not apply to state prisons and that prison officials' alleged denial of proper rehabilitative therapy and knee braces did not amount to deliberate indifference. The court also found that the officials' refusal to assign the inmate to a nonsmoking dormitory and to assign him to a bottom bunk did not violate his constitutional rights. According to the court, the inmate failed to establish that the level of environmental tobacco smoke (ETS) to which he was exposed for a four-day period had created an unreasonable risk of serious damage to his future health. Although a prison physician did not examine the inmate until approximately one month after the inmate requested to see a physician, the court found nothing in the record to suggest that the delay stemmed from any deliberate indifference on the part of the physician or any other prison official. The court also found that the failure of prison officials to arrange for the inmate's immediate consultation with a prison physician regarding the inmate's request for a medical transfer did not amount to deliberate indifference. (Bland Correctional Center, Virginia)

U.S. District Court
PROTECTIVE
CUSTODY

Carrigan v. State of Del., 957 F.Supp. 1376 (D.Del. 1997). A female inmate brought a civil rights action against prison officials and a guard as the result of an alleged rape by the guard. The district court found that the inmate did not establish deliberate indifference by prison officials where the officials had a policy forbidding sexual contact between correctional officers and inmates. The alleged rapist had received a total of 64 hours of

training, and the inmate offered no expert opinion to rebut an expert report that the training was adequate. The court found that prison officials were entitled to qualified immunity. The court noted that the inmate's transfer to protective custody following her alleged rape by a guard did not show deliberate indifference but, rather, showed the prison officials' attentiveness to her condition as they were aware that her claims put her at risk of attack by other inmates. The court found that the inmate failed to establish an Eighth Amendment violation through evidence of other incidents because nearly all of those incidents occurred after the alleged rape, and those which occurred prior took place at a different institution or were unsubstantiated by the inmate involved. However, the court found that the inmate had stated a claim based on gross or wanton negligence, or bad faith, against the guard. (Delaware Dept. of Correction)

U.S. District Court
CLASSIFICATION
CRITERIA
SEPARATION

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 court cited "abominable" treatment of mentally ill inmates at the facility. Mentally ill inmates were housed together in clusters with often four or five inmates per cell and the majority of inmate assaults occurred in the clusters. According to the court, when overcrowding and commingling of mentally ill inmates with the general population contributes to inmate-to-inmate violence, the failure to remedy the situation constitutes deliberate indifference to the inmates' basic safety and security in violation of the Eighth Amendment. The court also cited the failure of officials to house inmates according to an objectively based classification system and the failure to maintain separate housing for violent inmates. (Criminal Justice Complex, St. Thomas, Virgin Islands)

U.S. District Court
RACIAL
DISCRIMINATION

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
FAILURE TO PROTECT
SEPARATION

K.F.P. v. Dane County, 110 F.3d 516 (7th Cir. 1997). An inmate brought a § 1983 action against a county, a sheriff, and correctional facility employees after he was assaulted by another inmate. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed, finding that the inmate failed to present evidence establishing the liability of the employees, sheriff or county. The inmate failed to isolate for the court which individuals knew of another inmate's threatening nature and disregarded the danger to the plaintiff inmate. The court found that the inmate failed to establish that the county had a policy of housing violent and nonviolent inmates together, or that any county official knew of a causal link between the alleged policy and harm to inmates. The inmate was serving a forty-six day sentence in a dormitory-like facility used to house inmates with work release privileges. About a week into his sentence, the inmate was sexually assaulted by another inmate, and a week later the same inmate threatened to assault the plaintiff inmate again. (Dane County Ferris Center, Wisconsin)

U.S. District Court
CELL ASSIGNMENT
FAILURE TO PROTECT

Killingsworth v. Ondahl, 978 F.Supp. 1425 (D.Kan. 1997). An inmate brought a Bivens action alleging that prison officials were deliberately indifferent to his safety by placing him in a holding cell with a prisoner who had previously assaulted him. The district court granted summary judgment in favor of the officials, finding that the record did not show that the officials had information suggesting that the prisoner presented a threat to the inmate's safety. According to the court, it did not appear that the inmate notified officials of his belief that they should be separated, and the inmate did not allege that the prisoner made any effort to harm him while they were celled together. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
SEGREGATION
LENGTH OF
SEGREGATION
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
SEX OFFENDER
DUE PROCESS

Neal v. Shimoda, 131 F.3d 818 (9th Cir. 1997). Two state prisoners brought separate § 1983 actions against prison officials and administrators of a state's sex offender treatment program. They claimed that labelling them as sex offenders and compelling them to admit guilt violated their constitutional rights. The district court granted summary judgment for the defendants and the prisoners' appeals were consolidated. The appeals court held that the sex offender treatment program did not violate the Ex Post Facto Clause because denying a prisoner's eligibility for parole so that he could participate in treatment was not punishment. But the appeals court found that labelling a prisoner who was not convicted of a sex offense as a "sex offender" without a hearing, and requiring the successful completion of a treatment program as a precondition for parole eligibility, created a liberty interest protected by due process. The appeals court held that a prisoner is entitled to an advance statement of the reasons for the classification and to a hearing at which he can present a defense. According to the court, a prisoner convicted of a sex offense received all process to which he was due when he was notified that he was classified as a sex offender due to his conviction. The court found that a prisoner whose labelling as a sex offender violated due process was entitled to injunctive relief. The appeals court affirmed in part, reversed and remanded in part with instructions. The appeals court instructed the district court to issue an injunction ordering the Hawaii Parole Authority to remove "sex offender" from one of the prisoner's classifications unless and until he is provided with a hearing that provides him with the procedural protections contained in Wolff. (Hawaii Sex Offender Treatment Program)

1998

U.S. District Court
DUE PROCESS
TRANSFER
SEGREGATION

Batts v. Richards, 4 F.Supp.2d 96 (D.Conn. 1998). An inmate brought a § 1983 action against correctional officials alleging that his placement in administrative segregation and transfer to a different facility violated his due process rights. The district court granted summary judgment for the officials, finding that no due process violation occurred. According to the court, the inmate received due process because he was given written notice of a classification hearing 48 hours in advance, was given the opportunity to call witnesses, was given a hearing before a hearing officer with a staff advocate acting on his behalf, and the hearing officer issued a written report. (Northern Correctional Institution, Somers, Connecticut)

U.S. District Court
LOWER BUNK

Bout v. Bolden, 22 F.Supp.2d 646 (E.D.Mich. 1998). A prisoner brought a civil rights action against prison officials. The district court granted summary judgment for the defendants, finding that a prison official was not deliberately indifferent in refusing to reassign the prisoner to a lower bunk, even though the prisoner had been given a "medical detail" for assignment to a lower bunk. According to the court, even assuming that the official had knowledge of the medical detail, refusal to comply would not have posed conscious disregard for excessive risk to the prisoner's health and safety, given evidence of malingering in the prisoner's medical records. The court also held that drilling the prisoner's teeth without anesthesia for a short period in order to treat a dental condition is not the sort of barbarous and wanton infliction of pain from which a prisoner is protected by the Eighth Amendment. (Michigan Department of Corrections)

U.S. District Court
PROTECTIVE
CUSTODY

Bullock v. Barham, 23 F.Supp.2d 883 (N.D.Ill. 1998). A prisoner sued prison officials under § 1983 seeking to enjoin his transfer from protective custody to the general population, alleging the officials had previously failed to protect him from inmates who had threatened his life. The district court held that the prisoner's claim for injunctive relief to enjoin his transfer was cognizable, even though he was currently in protective custody, because the prison officials had previously failed to protect him from inmates and had transferred him back to the general population several times. The court denied the prisoner's claim for damages because the prisoner did not allege any physical injury. The prisoner had been a member of the Black Gangster street gang and alleged that the gang had placed a "hit" on him in retaliation for leaving the gang. (Joliet Correctional Center, Illinois)

U.S. District Court
CUSTODY LEVEL
SPECIAL NEEDS

Collins v. Hannigan, 14 F.Supp.2d 1239 (D.Kan. 1998). An inmate brought a pro se action against prison officials, a physician and a nurse, alleging that his constitutional rights were violated by their responses to his health-related complaints, which resulted in his transfer from minimum security to maximum security. The district court granted summary judgment in favor of the defendants. The court found that changes in the inmate's

medical and security classifications which resulted in his transfer from minimum security to maximum security, his inability to participate in a work program, and short visitation periods, did not pose an atypical and significant hardship that violated the due process clause. According to the court, denial of the opportunity to participate in an in-house work program does not raise due process concerns. The court held that a corrections officer did not violate the Eighth Amendment when he ordered the inmate, who had a heart condition, to clean baseboards. The inmate did not suffer serious injury but at most was dizzy and suffered some pain, and the officer checked with a physician before ordering the inmate to work. The court also found that the Eighth Amendment was not violated when a corrections officer allegedly waited 15 minutes before summoning medical assistance at the request of the inmate. The court held that the transfer of the inmate to a maximum security facility after his heart condition prevented him from working did not violate equal protection, and was justified by his need to be located close to a prison clinic. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
CLASSIFICATION

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

U.S. District Court
PRETRIAL DE-
TAINEES
SEPARATION

Faulcon v. City of Philadelphia, 18 F.Supp.2d 537 (E.D.Pa. 1998). A pretrial detainee who had been stabbed by another inmate sued city officials and correction officers, alleging failure to protect, failure to supervise and failure to train under the Eighth Amendment. The district court granted summary judgment to the defendants, finding that the facility's policy of keeping pretrial detainees in the same housing unit as convicted inmates did not constitute deliberate indifference to a substantial risk of harm. The court also held that the lack of guidelines or training procedures regarding segregation of convicted inmates was insufficient to support claims for failure to supervise or failure to train. According to the court, a state statutory provision that indicated that sentenced prisoners should be housed separately from detainees was merely a recommended guideline rather than a mandatory requirement. (Philadelphia Industrial Corr'l Center, Penn.)

U.S. Appeals Court
INTERPRETER

Franklin v. District of Columbia, 163 F.3d 625 (D.C.Cir. 1998). Spanish-speaking prisoners incarcerated in eight District of Columbia correctional facilities brought a class action under § 1983 alleging that the District violated their First, Fifth and Eighth Amendment rights as well as federal and local statutes by failing to provide qualified interpreters when they appeared at parole and disciplinary hearings and when they sought medical care. The district court found that the District violated the Fifth and Eighth Amendments and entered an injunction. The appeals court vacated in part and reversed in part. The appeals court held that the prisoners lacked standing to assert due process challenges regarding parole hearings for misdemeanants because they did not name any members of the class who went before the parole board as misdemeanants and did not understand the proceedings because of lack of proficiency in English. Upon learning that the authority for parole of felons had been transferred to the United States Parole Commission since the district court had ruled, the appeals court stated that "why neither of the parties, and why especially the District of Columbia never alerted us to this statute is beyond comprehension." The appeals court found that failure to provide interpreters at all disciplinary hearings, adjustment board hearings, housing determinations, and classification decisions did not violate due process. The appeals court also found that the District's failure to provide interpreters for prisoners during medical consultations was not cruel and unusual punishment. (District of Columbia)

U.S. Appeals Court
CUSTODY LEVEL

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 claim that he was improperly classified as a close custody inmate, absent any showing that the jail's classification system was not reasonably related to legitimate penological interests. (Madison Street Jail, Maricopa County, Arizona)

U.S. District Court
CELL ASSIGNMENT
LOWER BUNK

Hron v. Jenkins, 15 F.Supp.2d 1082 (D.Kan. 1998). An inmate brought a Bivens action against prison officials alleging violation of his Eighth Amendment rights. The district court granted summary judgment in favor of the defendants, finding that the officials did not show deliberate indifference to the inmate's medical needs when they assigned him to an upper bunk. The inmate was susceptible to seizures and he was assigned to an upper tier cell after he returned from reconstructive knee surgery that was required after he fell from his upper bunk. The court found that the cell and bunk assignments reflected, at most, negligence. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
SEPARATION

Mabine v. Vaughn, 25 F.Supp.2d 587 (E.D.Pa. 1998). An inmate brought a § 1983 action against three prison officials alleging that they failed to protect him from other inmates. The district court granted summary judgment in favor of the defendants, finding that the fact that the inmate's attacker was inadvertently released into the general prison population did not violate the Eighth Amendment. The court also found no violation in the fact that prison officials failed to keep the inmate separate from another inmate who was the victim's brother. (State Correctional Institution at Graterford, Pennsylvania)

U.S. District Court
SMOKING

McPherson v. Coombe, 29 F.Supp.2d 141 (W.D.N.Y. 1998). An inmate brought a § 1983 action alleging violations of his First, Eighth and Fourteenth Amendment rights arising from his exposure to environmental tobacco smoke (ETS). The district court denied the defendants' motion for summary judgment, finding that it was precluded by fact questions as to whether smoke conditions in the prison violated contemporary standards of decency, whether officials were aware of the potential risks to the inmate's future health, and whether the superintendent was personally involved in decisions leading to denial of the inmate's request to be housed in a smoke-free environment. The court found that prison smoking regulations, which permitted smoking in dormitory areas, did not violate the inmate's First Amendment rights to freedom of association because designated non-smoking areas gave the inmate opportunities to exercise his right to associate with other inmates. The inmate had alleged that the smoking policy restricted his movement within the dormitory in his attempt to evade contact with ETS. (Attica Correctional Facility and Orleans Correctional Facility, New York)

U.S. District Court
MENTALLY ILL

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 failed to hospitalize inmates whose mental health condition required the therapeutic environment of a mental health treatment facility, allowing several mentally ill patients to continue to cohabit with the general population without being tendered any type of mental health treatment. 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. 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. (Pennsylvania Department of Corrections)

U.S. District Court
CELL ASSIGNMENT
RACIAL DISCRIMINATION

Simpson v. Horn, 25 F.Supp.2d 563 (E.D.Pa. 1998). An inmate brought a § 1983 action against a corrections commissioner and officials, alleging that conditions of confinement at an overcrowded facility violated his Eighth Amendment rights, and that a classification system for double-cell assignment violated the equal protection clause. The district court found that the alleged deficiencies in the facility were not cruel and unusual punishment, but that fact issues precluded summary judgment on the equal protection claim. The court questioned the officials' intent to cause racial segregation via double-celling, and ruled they were not entitled to qualified immunity with respect to that claim. The court noted that prison

officials 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. The court found that housing two inmates in a cell designed for one inmate does not, per se, violate the Eighth Amendment proscription against cruel and unusual punishment, but it may if it results in deprivations of essential food, medical care, sanitation or other conditions intolerable for human confinements. The inmate had alleged that as the result of overcrowding, inmates were not provided with adequate furniture, cleaning supplies, laundry service, ventilation, bedding, clothing, seating, recreational equipment, or telephones. He also alleged that food was served cold 85% of the time and that the dining hall was not kept clean or free of vermin. (State Correctional Institution at Graterford, Pennsylvania)

U.S. Appeals Court
PRETRIAL DETAIN.
FAILURE TO PROT.

Turquitt v. Jefferson County, Ala., 137 F.3d 1285 (11th Cir. 1998). The estate of a pretrial detainee who was killed during an altercation with another inmate at a county jail filed a civil rights action against the county. The district court denied the county's motion to dismiss and the county appealed. The appeals court vacated and remanded, finding that an Alabama county cannot be liable in a civil rights case for harms that befall jail inmates due to improper operation of the jail or negligent supervision of its inmates because the county has no responsibility in that area. According to the court, the sheriff, not the county, is responsible for jail conditions under Alabama law; counties have no duties with respect to daily operation of county jails and have no authority to dictate how jails are run. The deceased inmate was fatally injured in a fight with another inmate, who was a convicted felon, in the dayroom of the jail. (Jefferson County Jail, Alabama)

U.S. District Court
CUSTODY LEVEL

U.S. v. Harmon, 999 F.Supp. 467 (W.D.N.Y. 1998). An offender brought a habeas corpus petition following his conviction. The district court denied the petition and held that it would not direct the federal Bureau of Prisons to lower the offender's custody classification level. The court found that there was no allegation that his custody classification was unlawful and there was no evidence that the defendant had sought prior administrative relief. (Federal Bureau of Prisons)

1999

U.S. District Court
ADA-Americans with
Disabilities Act
HANDICAP

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

U.S. District Court
SEX OFFENDERS

Cooper v. Garcia, 55 F.Supp.2d 1090 (S.D.Cal. 1999). An inmate brought a § 1983 action against prison officials following the denial of family visitation privileges. The district court dismissed the action, finding that the inmate did not have a liberty interest in a state family visitation program, and the classification of the inmate as a "sex offender" did not violate his right to procedural due process. According to the court, state regulations stated that family visitation was a privilege, not a right. The court noted that the classification of the inmate as a "sex offender" without an individualized assessment of security risks did not violate the inmate's due process rights, even though the inmate was not convicted of a sex offense and the inmate was denied family visitation as a result of the classification, because the classification did not result in any mandatory, coercive treatment. (Centinela State Prison, California)

U.S. District Court
PROTECTIVE CUST.
SEPARATION

Giroux v. Somerset County, 178 F.3d 28 (1st Cir. 1999). A jail inmate who had been assaulted by another inmate sued a jail employee, sheriff and county alleging violations of § 1983. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court vacated and remanded, finding that summary judgment was precluded by a factual dispute about the scope of the jail shift supervisor's responsibility and whether he abdicated his responsibility. The inmate was threatened by a cellmate when he left his cell to meet with a detective. After the meeting the inmate was moved to a different cell, apparently in response to the threat. The inmate was threatened again the next day when he was escorted past his former cell, and was allegedly threatened by other inmates while dining. The inmate requested protective custody. Although he was not moved, he was placed on "cell feed" status which eliminated his contact with other inmates in the common dining area. Several days later the inmate was involved with a visit which required him to use a common visiting area. While in

the visiting area he was assaulted by his former cellmate who was also involved with a visit. The inmate suffered a broken nose, torn shoulder ligaments and a head laceration which required stitches. (Somerset County Jail, Maine)

U.S. Appeals Court
SEX OFFENDERS

Glauner v. Miller, 184 F.3d 1053 (9th Cir. 1999). A state prisoner brought a § 1983 action challenging the constitutionality of a Nevada statute that requires a panel to certify that certain sexual offenders are not a menace to the health, safety or morals of others, prior to parole eligibility. The district court dismissed the action and the appeals court affirmed, finding that the statute did not violate the prisoner's right to equal protection and the statute was not void for vagueness. The court noted that heightened recidivism concerns for sexual offenders provided a rational basis for requiring more scrutiny in parole matters than other classes of criminals. (Nevada)

U.S. Appeals Court
SEX OFFENDER

Kirby v. Siegelman, 195 F.3d 1285 (11th Cir. 1999). In separate cases, state prisoners challenged the application of a sex offender community notification statute to them in § 1983 actions. The cases were dismissed by the district court and were consolidated on appeal. The appeals court affirmed in part, reversed in part and remanded in part. The appeals court held that one prisoner, who had not been convicted of a sex crime, was entitled to due process before being classified as a sex offender because of the stigmatizing effect of being classified as a sex offender. The prisoner was classified based on prior sex-related charges rather than a conviction. (Alabama's Community Notification Statute)

U.S. District Court
RACIAL DISCRIMIN.

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 Recept./Diagnostic Ctr, Missouri)

U.S. Appeals Court
PRETRIAL DETAIN.
EQUAL PROTECTION
TRUSTY

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
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
CUSTODY LEVEL
TRANSFER

Posey v. Dewalt, 86 F.Supp.2d 565 (E.D.Va. 1999). A federal inmate filed a petition for a writ of habeas corpus challenging a decision by the federal Bureau of Prisons to deny him minimum custody status on the basis of a state detainer that had been filed against him. The district court dismissed the petition, finding that consideration of the state detainer as part of the inmate's classification did not implicate a liberty interest under the due process clause because the inmate had no protected liberty interest in a particular classification or in being assigned to a particular institution. (Federal Correctional Institution at Petersburg, Virginia)

- U.S. District Court
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. (Allen County Jail, Indiana)
- 2000
- U.S. Appeals Court
CUSTODY LEVEL
DUE PROCESS
REVIEW
LIBERTY INTEREST
- Abed v. Armstrong, 209 F.3d 63 (2nd Cir. 2000). A state prisoner petitioned for habeas corpus relief and the district court granted summary judgment against the prisoner. The appeals court affirmed, finding that a state prison administrative directive making inmates classified as safety threats ineligible to earn good time credit did not violate the Ex Post Facto Clause. The court noted that the prisoner had no protected liberty interest in the opportunity to earn good time credit. According to the appeals court, the inmate received all process he was due before being classified as a safety threat because a hearing was held before the inmate was classified, his status was reviewed every six months, and he had the right to request reconsideration of his status at any time in writing. (Connecticut Department of Corrections)
- U.S. District Court
PRETRIAL
DETENTION
FAILURE TO
PROTECT
- Burciaga v. County of Lenawee, 123 F.Supp.2d 1076 (E.D.Mich. 2000). A pretrial detainee brought a civil rights action against county officials, alleging harm as the result of housing him with an assaultive prisoner. The district court granted summary judgment for the defendants. The court held that the county did not violate the detainee's due process rights by housing him with another detainee or by improperly classifying both inmates as medium-security inmates. Both inmates had been previously incarcerated for assault. (Lenawee County Jail, Michigan)
- U.S. Appeals Court
SEX OFFENDERS
DUE PROCESS
- Chambers v. Colorado Dept. of Corrections, 205 F.3d 1237 (10th Cir. 2000). An inmate challenged his classification as a sex offender by a state corrections department and the district court granted summary judgment to the department. The appeals court affirmed in part and reversed in part. The appeals court held that the requirement that the offender participate in a sex offender treatment program was not an ex post facto violation, but that the inmate had a procedural due process right to a hearing before being classified as a sex offender. According to the court, the inmate had a protected liberty interest in not being labeled as a sex offender. (Colorado Department of Corrections, Sex Offender Treatment Program)
- U.S. Appeals Court
SEPARATION
- Curry v. Crist, 226 F.3d 974 (8th Cir. 2000). Heirs of an inmate who was murdered by fellow prisoners while the two were alone in an unsupervised area of a prison brought a civil rights action against the prison warden. The district court granted summary judgment in favor of the warden and the appeals court affirmed. The appeals court held that the warden was not deliberately indifferent to the risks of allowing the inmate to work with the other prisoner in an unsupervised area of the prison. The court noted that the prisoner who made the fatal attack had been convicted of multiple murders and had made threats, 16 months earlier, to murder his fellow inmates. According to the court, there was no evidence that the murderer harbored any animosity toward the murdered inmate or that his selection of him as his victim was anything but fortuitous. The court noted that prison officials are not required to segregate indefinitely all inmates whose original crimes suggest that they might be capable of further violence. (Stillwater Correctional Facility, Minnesota)
- U.S. District Court
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
PRETRIAL
DETENTION
SEPARATION
- 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. Appeals Court
RACIAL DISCRIMI-
NATION

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. (California Department of Corrections)

U.S. District Court
SEX OFFENDERS

Martinez Diaz v. Olsen, 110 F.Supp.2d 295 (D.N.J. 2000). An offender petitioned for habeas corpus relief challenging the constitutionality of sex offender registration and notification requirements. The district court denied the petition, finding that the offender who was convicted of rape was properly classified as a sex offender for the purposes of a federal statute and the Bureau of Prisons program statement that imposed registration and notification requirements on sex offenders. (Federal Correctional Institute, Fairton, New Jersey)

U.S. District Court
PROTECTIVE
CUSTODY
SEPARATION

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

U.S. District Court
AIDS
SEPARATION

Oladipupo v. Austin, 104 F.Supp.2d 626 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court held that the failure of jail officials to segregate pretrial detainees who were HIV positive did not violate the due process rights of non-infected detainees. (Avoyelles Parish Jail, La.)

U.S. District Court
SEPARATION
PRETRIAL
DETAINEES

Oladipupo v. Austin, 104 F.Supp.2d 643 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court found that the fact that INS detainees held at the parish jail had fewer privileges than INS detainees held at a federal detention center did not violate the Equal Protection Clause. The court also found that housing INS detainees with convicted prisoners did not violate the Due Process Clause. The court denied summary judgment for the officials on the allegation that the housing unit at the jail had serious sewage problems that created unsanitary conditions. The court also denied summary judgment to the officials on the allegation that the jail had an inadequate number of emergency exits. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
CUSTODY LEVEL
DUE PROCESS

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

U.S. District Court
RACIAL DIS-
CRIMINATION

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. Appeals Court
PROTECTIVE
CUSTODY
SEPARATION

Weiss v. Cooley, 230 F.3d 1027 (7th Cir. 2000). A suspect in a highly publicized rape case, who had been assaulted by fellow inmates while detained in a county jail, brought a § 1983 action against the sheriff, jail commander and a jail officer. The district court dismissed the claims against the sheriff and jail commander and granted summary judgment for the officer. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment for the officer was precluded by a fact issue as to whether the officer had actual knowledge that the suspect faced an objective risk of danger. Affirming the dismissal of the sheriff and jail commander from the action, the appeals court noted that allegations that circumstances were such that assaults on prisoners like the suspect were inevitable, and that the system used to classify inmates for housing safety purposes were inadequate, were insufficient to provide adequate notice to the sheriff and commander in order to sustain an Eighth Amendment claim against them. Upon admission to the jail, the suspect had been asked if he had any enemies in the jail, if he needed any special care, or if he had ever assaulted anyone or was contemplating assaulting anyone, and the suspect answered "no" to each of these questions. (Morgan County Jail, Indiana)

2001

U.S. District Court
AIDS

Canell v. Multnomah County, 141 F.Supp.2d 1046 (D.Or. 2001). An inmate brought a § 1983 action alleging that his conditions of confinement in a county jail violated his constitutional rights. The district court granted summary judgment for the defendants. The district court held that the inmate did not suffer a constitutionally significant injury, sufficient to support a § 1983 action under the Prison Litigation Reform Act (PLRA), as the result of jail officials' failure to shower and "debug" inmates or test them for communicable diseases before double bunking them and mixing them with the general population. The court found that the inmate's exposure to a cellmate suffering from acquired immune deficiency syndrome (AIDS) did not violate his rights, even though he was splashed in the eye with vomit from the cellmate, where the inmate had not since been tested as HIV positive. (Multnomah County Jails, Oregon)

U.S. Appeals Court
CLASSIFICATION
CRITERIA
SPECIAL NEEDS

Chisolm v. McManimon, 275 F.3d 315 (3rd Cir. 2001). A hearing-impaired detainee brought a suit against the warden of a pretrial detention 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. 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. District Court
CELL ASSIGNMENT

Dobbin v. Artuz, 143 F.Supp.2d 292 (S.D.N.Y. 2001). A state inmate brought a § 1983 action against prison officials and medical staff, arising from a fall down stairs at the prison. The district court granted summary judgment in favor of the defendants, finding they were not deliberately indifferent to the medical needs of the inmate. The inmate had requested to be moved to a cell on the ground floor on several occasions but he had failed to demonstrate any medical need for such a move. The court noted that the inmate regularly received sick calls and medication upon request, including consultations with outside specialists in connection with his back condition. (Green Haven Correctional Facility, New York)

- U.S. District Court
SEX OFFENDERS
DUE PROCESS
- Jones v. Puckett*, 160 F.Supp.2d 1016 (W.D.Wis. 2001). A prisoner brought a § 1983 action against two corrections officials for violation of his Fourteenth Amendment rights in labeling him as a sex offender without due process. The district court granted summary judgment in favor of the defendants. The court held that the prisoner did not have a liberty interest in not being identified as a sex offender in prison records, noting that evaluation of the needs of prisoners was a normal prison procedure and such evaluations were not made a matter of public knowledge in such a way that would constitute a stigma. The court also found that the defendants were entitled to qualified immunity because, at the time of the prisoner's evaluation, no law held that an inmate had a Fourteenth Amendment liberty interest in not being so classified. (Oshkosh Correctional Institution, Wisconsin)
- U.S. District Court
CUSTODY LEVEL
DUE PROCESS
- Lile v. Simmons*, 143 F.Supp.2d 1267 (D.Kan. 2001). An inmate brought a § 1983 action, individually and on behalf of others who are similarly situated, against state corrections officials. The inmate alleged he was denied due process with respect to determining his custody classification. The court denied the inmate's motion to certify a class action and granted summary judgment in favor of the defendants. The court found that the inmate had no protected liberty interest in a correct risk level classification, and that even if he had such an interest, his due process rights were not violated by his current "medium" classification. The court noted that a liberty interest in a particular custody classification may arise only if state law or prison regulations create such a right. (Lansing Correctional Facility, Kansas)
- U.S. Appeals Court
GANGS
- Mayoral v. Sheahan*, 245 F.3d 934 (7th Cir. 2001). A pretrial detainee who was severely injured in a gang-instigated jailhouse riot brought a civil rights suit against a county sheriff and jail officers, alleging they were deliberately indifferent to his safety. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the failure of the jail to segregate inmates by gang affiliation was not a constitutional violation, given the high number of gang members housed in the jail and the burden that would be placed on administrators by such a policy. The court found that summary judgment was precluded by fact issues as to whether the detainee had asked an officer for protective custody and was ignored, and whether an officer delayed in summoning help when fighting broke out. (Cook County Jail, Illinois)
- U.S. District Court
PROTECTIVE
CUSTODY
TRANSFER
- 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. District Court
SMOKING
- Reilly v. Grayson*, 157 F.Supp.2d 762 (E.D.Mich. 2001). A prisoner brought a § 1983 action against a warden, deputy warden, and Michigan Department of Corrections physicians, alleging violation of his Eighth Amendment rights. After a bench trial, the district court ruled that the warden and deputy wardens were deliberately indifferent to the prisoner's serious medical need to be placed in a smoke-free environment, supporting the prisoner's cruel and unusual punishment claims. The court found that the wardens were reckless in their disregard of the prisoner's rights, and awarded the prisoner \$18,250 in punitive damages and \$36,500 in compensatory damages for the five years of inaction by the wardens. The prisoner had two Individual Management Plans (IMP) which required that he be placed in a smoke-free environment, but the non-smoking regulations in the prisoner's cell block were consistently violated and the wardens were aware of the violations. After receiving notice that the IMPs were not being followed, the wardens continued to do nothing to remedy the situation. The court concluded that the three wardens "...each clearly ignored his supervisory obligations and, as a consequence, should suffer the opprobrium of punitive damages, not so much to deter each of them in the future, but to deter other officials in like positions of ignoring their responsibility." (Trustee Division, State Prison of Southern Michigan)
- U.S. Appeals Court
SEPARATION
- Wilson v. Jones*, 251 F.3d 1340 (11th Cir. 2001). A female arrestee brought a civil rights action against a county sheriff challenging her strip search following her arrest for driving under the influence. The district court denied the sheriff's motion to dismiss. The appeals court reversed. The appeals court held that the strip search violated the arrestee's Fourth Amendment privacy rights, but that the sheriff was entitled to qualified immunity because the unconstitutionality of the county's blanket strip search policy was not clearly established at the time of the search. The arrestee had been strip searched by a female corrections officer before being placed in a cell with the general female population because the county did not have separate facilities to temporarily hold female detainees. (Shelby County Jail, Alabama)

U.S. District Court
DUE PROCESS
RECLASSIFICATION
CUSTODY LEVEL
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 interest 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
PRETRIAL
DETAINEE
SEPARATION

Burrell v. Hampshire County, 307 F.3d 1 (1st Cir. 2002). A pretrial detainee who was severely beaten by a fellow detainee brought a § 1983 action against a county and county officials, alleging deliberate indifference to his health and safety in violation of the Fourteenth Amendment. The detainee also alleged an Eighth Amendment violation resulting from failure to segregate violent and nonviolent detainees. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The detainee had told one jail official that he was threatened by a fellow detainee who had a history of assaults, but the officials failed to separate them. The court noted that the plaintiff told one official he had a black belt in martial arts and was a decorated war hero and never requested protective custody. The court found that the county's policy of not screening or segregating potentially violent inmates from non-violent ones did not constitute deliberate indifference to the health and safety of detainees, because inmates were housed in single cells and were able to lock their cells from the inside at any time. (Hampshire County Jail/House of Corrections, Massachusetts)

U.S. Appeals Court
CELL ASSIGNMENT
SEPARATION

Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043 (9th Cir. 2002). The family and estate of a state prison inmate who was killed by his cellmate brought a § 1983 action against an associate warden and correctional officers. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed, finding that the defendants were entitled to qualified immunity. The court noted that the correctional officers violated the Eighth Amendment to the extent that the officers knew that the inmate was acting out dangerously with his cellmates, or that he was a threat to another inmate. The cellmate had been under observation for two weeks after an incident with a different cellmate, had been returned on medications and was not found to be in need of single-celling. (California Medical Facility-Vacaville)

U.S. Appeals Court
CUSTODY LEVEL

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. (N.J. Dept. of Corrections)

U.S. Appeals Court
DUE PROCESS
CUSTODY LEVEL

Kitchen v. Upshaw, 286 F.3d 179 (4th Cir. 2002). A former jail inmate brought a § 1983 action against a regional jail authority and jail officials, alleging violation of his due process rights when he was not allowed to participate in a work release program. The district court granted summary judgment to the defendants and the appeals court affirmed. The appeals court held that the authority was not an arm of the state and was therefore not protected by Eleventh Amendment immunity. But the court held that the inmate did not have a liberty interest under state law in participating in a work release program that was protected by the due process clause. (Riverside Regional Jail, Virginia)

U.S. Appeals Court
PRIVILEGES

Love v. McKune, 33 Fed.Appx. 369 (10th Cir. 2002). Four prison inmates brought a civil rights action challenging their forced participation in a prison incentive level system that tied inmate privileges to participation in programs and good behavior. The district court dismissed the action and the appeals court affirmed. The appeals court held that forced participation did not violate the inmates' Fourteenth Amendment due process rights. The Internal Management Policy and Procedure (IMPP) system assigned inmates to one of four levels. Each level had a corresponding level of privileges, such as television ownership, handicrafts, participation in organizations, use of outside funds, canteen expenditures, incentive pay, and visitation. The system had been previously upheld by the state supreme court, which found that none of the restrictions denied to inmates on lower levels infringed on inmates' property or liberty interests and therefore did not implicate due process protection. (Lansing Correctional Facility, Kansas)

U.S. District Court
SEX OFFENDERS

Montalvo v. Snyder, 207 F.Supp.2d 581 (E.D.Ky. 2002). A prisoner sued the federal Bureau of Prisons claiming that he was wrongfully classified as a sexual offender and subjected to a statutory requirement that authorities be notified prior to his release. The district court entered judgment for the Bureau, finding that it was appropriate to classify the prisoner based on his state conviction for criminal sexual abuse. The court also held that the statute requiring the Bureau to notify authorities when a sex offender was about to be released did not violate the Double Jeopardy Clause, because Congress intended the statute to be remedial by serving law enforcement and protecting the public, rather than punitive. (Federal Correctional Institution, Manchester, Kentucky)

U.S. District Court
SEX OFFENDERS

Munoz v. Kolender, 208 F.Supp.2d 1125 (S.D.Cal. 2002). A civil detainee who was confined in a county jail under the provisions of California's Sexually Violent Predator Act brought a § 1983 action against a county sheriff, challenging his confinement and the conditions of his confinement. The district court granted summary judgment in favor of the sheriff. The court held that the Act had a dual purpose, to remove dangerous sexually violent predators from society and to provide them with treatment, and that confinement pursuant to the Act was civil in nature, rather than criminal and punitive. (San Diego County Jail, California)

U.S. District Court
CELL ASSIGNMENT

Smith v. Muccino, 223 F.Supp.2d 396 (D.Conn. 2002). A state prisoner brought a pro se action alleging that the practice of housing him with violent inmates, sometimes in retaliation for his complaints, violated his constitutional rights. After an agreement to settle the case fell through, the court reopened the case and held that the prisoner's allegations stated a claim for an Eighth Amendment violation. The court noted that the prisoner was not claiming that double-celling was per se unlawful. The prisoner, who is Caucasian and who believes he is perceived to be gay, alleged that he was repeatedly housed with racist and homophobic inmates, and that his requests for a cell change were ignored. (Osborn Correctional Institution, Connecticut)

U.S. Appeals Court
HOMOSEXUALS
EQUAL
PROTECTION

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. Appeals Court
CELL ASSIGNMENT
GANGS

Washington v. LaPorte County Sheriff's Dept., 306 F.3d 515 (7th Cir. 2002). A pretrial detainee brought a § 1983 due process claim against a jail and its officers, alleging that injuries he suffered when he was attacked by another inmate were caused by the jail's cell assignment policy. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed, finding that the jail's cell assignment policy did not demonstrate deliberate indifference on the part of officials to a substantial risk of serious harm to the detainee. The policy allowed inmates to choose their own cell assignments. The detainee was charged with driving with a suspended license and he was detained at the jail pending trial, as he was unable to post bond. He was assigned to a cell block originally designed to hold ten inmates, but which actually housed seventeen. The detainee was allowed to choose his own cell

assignment within the housing unit. The court noted that the detainee shared a cell with the inmate who eventually assaulted him for two weeks without incident prior to the attack, and did not inform jail officers he had fought with the inmate or that he feared harm. (LaPointe County Jail, Indiana)

U.S. District Court
SEX OFFENDER
CIVIL COMMIT-
MENT

West v. Macht, 235 F.Supp.2d 966 (E.D.Wis. 2002). Civilly-committed sex offenders brought a § 1983 action against employees of a state treatment facility. The district court held that security-related seclusion placements did not violate the offenders' substantive due process rights because they were rationally related to the purpose of maintaining institutional security and could not reasonably be characterized as punitive. But the court found that fact issues existed as to whether treatment-related placements were based on staff psychologists' reasonable professional judgment, because expert testimony asserted that the placements were not consistent with accepted professional norms. (Wisconsin Resource Center, Wisconsin Department of Health and Family Services)

2003

U.S. District Court
CUSTODY LEVEL
TRANSFER

Adler v. Menifee, 293 F.Supp.2d 363 (S.D.N.Y. 2003). A federal prisoner sought an order compelling the federal Bureau of Prisons to disregard the statutory requirement that limits the period of time an inmate may spend in a community confinement center to 10% of his total sentence. The district court held that the Bureau's application of the statute did not implicate the Administrative Procedures Act and did not violate the ex post facto clause. (U.S. District Court, Southern District New York)

U.S. Appeals Court
SEPARATION

Cardenas v. Lewis, 66 Fed.Appx. 86 (9th Cir. 2003). [unpublished] A pretrial detainee brought a pro se § 1983 action against a county, alleging deliberate indifference to a substantial risk to his safety. 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 officers who placed the detainee in a holding tank with an inmate, from whom the detainee was supposed to be kept separated, were not acting with deliberate indifference, even if the officers were negligent in failing to check the detainee's "keep separate" wristband. The court found that the detainee was deprived of due process in disciplinary proceedings in which he was allegedly not allowed to call witnesses, to have his exculpatory statement read, or to tape the hearings, and was placed in segregation without a hearing. (Yakima County Department of Corrections, Washington)

U.S. Appeals Court
LOWER BUNK

Hoover v. Keating, 59 Fed.Appx. 288 (10th Cir. 2003) [unpublished]. A state inmate filed a § 1983 action alleging that his disciplinary citations should have been reversed for his refusal to comply with housing assignments, in violation of the Americans with Disabilities Act (ADA) and the Eighth and Fourteenth Amendments. The district court entered summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed, finding that the officials did not violate ADA by disciplining the inmate for refusing to obey housing orders. The court held that assigning the inmate randomly, rather than using restrictive housing, did not deprive the inmate of due process. The inmate had a medical condition that required him to be assigned to a lower bunk only, but the court found that the inmate's refusal was based on the race of his newly-assigned cell mate, rather than on his alleged disability. (Dick Conner Correction Center, Oklahoma)

U.S. Appeals Court
CELL ASSIGNMENT
RACIAL DISCRIMI-
NATION
DOUBLE CELLING

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. District Court
SEPARATION
GANGS

Mooring v. San Francisco Sheriff's Dept., 289 F.Supp.2d 1110 (N.D.Cal. 2003). A county jail inmate brought a pro se § 1983 action alleging deliberate indifference to his safety when he was housed unwillingly with gang rivals who assaulted him. The court granted summary judgment for the defendants. The court held that a deputy sheriff did not violate the inmate's due process right to protection from violence, absent any evidence that the deputy knew the inmate's

particular gang affiliation or that the deputy could have learned the inmate's gang affiliation from information on the inmate's housing records. (San Francisco County Jail, California)

U.S. District Court
DUE PROCESS
CUSTODY LEVEL

Torres v. Stewart, 263 F.Supp.2d 463 (D.Conn. 2003). A state inmate sued prison officials, alleging that as a pretrial detainee he was designated as a security risk without a hearing, and confined in segregation in violation of his due process rights. The inmate sought damages and the restoration of forfeited good time credits. The district court entered summary judgment in favor of the defendants. The court held that the inmate's request for restoration of good time credits was not cognizable under § 1983, and that as a pretrial detainee, he had not protected liberty interest in his classification. The court noted that the classification was not punishment proscribed by due process principles. The detainee had received a notice of his hearing two days prior to its scheduled date, declined to present witnesses, declined the assistance of an advocate, admitted to being a soldier for a gang, was identified as a regional commander in the gang, and had been arrested for the murder of a rival gang member. (Northern Correctional Institution, Connecticut)

U.S. Appeals Court
SEX OFFENDERS

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

U.S. Appeals Court
SEX OFFENDERS

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
SEPARATION
TRANSFER

Ashford v. District of Columbia, 306 F.Supp.2d 8 (D.D.C. 2004). A prisoner brought a civil rights action against the District of Columbia and its employees, alleging they were liable to him for injuries resulting from an attack by other inmates. The district court held that the prisoner stated a sufficient causal connection between his injuries and the District's alleged policy or custom of transferring inmates without informing the receiving institutions about active separation orders. The court also found that the prisoner stated a claim under § 1983 against the District's Interstate Compacts administrator. The court noted that the prisoner told prison officials at the receiving facility about the separation orders, but that an official separation order would have received more consideration and attention. (Pleasant Valley State Prison, California)

U.S. Appeals Court
CUSTODY LEVEL
DUE PROCESS

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
CLASSIFICATION
SEPARATION
FAILURE TO
PROTECT

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

U.S. District Court
CUSTODY LEVEL
TRANSFER

Colton v. Ashcroft, 299 F.Supp.2d 681 (E.D.Ky. 2004). A federal prisoner filed a petition for habeas corpus relief alleging that the federal Bureau of Prison's new regulation, which would delay his release to a halfway house until only ten percent of his sentence remained, violated the notice and comment provisions of the Administrative Procedures Act (APA). The district court granted the prisoner's motion for a preliminary injunction. The court held that the Prison Litigation Reform Act's (PLRA) exhaustion requirements did not apply to a habeas petition. The court noted that the public interest would be served by the grant of an injunction and that the prisoner would be irreparably harmed in the absence of an injunction. The court ordered the prisoner to be immediately transferred to a halfway house without regard to the new regulation. (FMC-Lexington, Kentucky, Fed. Bureau of Prisons)

U.S. District Court
SMOKING

Johnson v. Pearson, 316 F.Supp.2d 307 (E.D.Va. 2004). A prisoner brought a civil rights action under § 1983 against state prison officials, alleging that they acted with deliberate indifference to his risk of medical harm when they refused to assign him to a nonsmoking cell. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the defendants acted with deliberate indifference to the risk of serious damage to the prisoner's future health as the result of his exposure to environmental tobacco smoke, and that the defendants were not entitled to qualified immunity from the prisoner's future injury claims. The court also held that the prisoner's allegations regarding present injuries from environmental tobacco smoke stated a cognizable claim under the Eighth Amendment, and that the defendants were not entitled to qualified immunity from that claim. The inmate alleged that he experienced mild headaches, difficulty breathing, eye irritation, runny nose, dizziness, and occasional stomach cramping when he was housed with a smoking inmate. The court noted that officials never considered the consequences of future health problems when they refused to transfer the inmate to a nonsmoking cell, but were only concerned with administrative convenience. (Sussex II State Prison, Virginia)

U.S. District Court
SEX OFFENDER
DUE PROCESS

Kritenbrink v. Crawford, 313 F.Supp.2d 1043 (D.Nev. 2004). Former and current state inmates filed § 1983 actions alleging that the state provided no adequate due process procedures for them to challenge their classification as sex offenders. The district court dismissed the action, finding that the current inmate had to exhaust his administrative remedies, and that the state did not violate the former inmate's procedural due process rights. The court found that the State of Nevada provided an adequate administrative procedure for the inmate to challenge his classification as a sex offender, where administrative regulations stated that classification decisions were grievable and that the grievance procedure had to afford a meaningful remedy. (Northern Nevada Correctional Center, and Warm Springs Correctional Center, Nevada)

U.S. Appeals Court
SMOKING

Lehn v. Holmes, 364 F.3d 862 (7th Cir. 2004). A pro se state prisoner sued a state, alleging denial of access to the courts and living conditions that violated the Eighth Amendment. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that the State of Illinois, the state in which the prisoner was confined, was the proper defendant on the prisoner's claim that denial of access to Maryland legal materials hampered his ability to respond to pending Maryland criminal charges. The court also found that the prisoner had standing to challenge the corrections department's system-wide practice of housing nonsmoking inmates with smokers, by alleging concrete, particularized and actual injuries traceable to the practice. The court noted that the plaintiff held a Ph.D. in biochemistry and was a former Resident Research Assistant at the National Cancer Institute, and that he "knows a lot about the ill effects of exposure to second-hand tobacco smoke." (Pontiac Correctional Center, Big Muddy Correctional Center, and Graham Correctional Center, Illinois)

U.S. District Court
LOWER BUNK

Pennington v. Taylor, 343 F.Supp.2d 508 (E.D.Va. 2004). A state prisoner brought a pro se § 1983 action against a correctional officer, alleging that the officer showed deliberate indifference to a risk of harm by assigning him to a top bunk in light of certain medical conditions. The district court granted summary judgment in favor of the officer. The court held that the officer was not deliberately indifferent because he simply had the prisoner's representations as to his medical

condition, and she had no duty to confirm the representations because she had no authority over bed assignments, and there was no prior medically-authorized bottom bunk assignment. The court noted that the officer informed the prisoner of the steps he needed to take to change his bunk assignment, and there was no immediate indication that the prisoner was at risk. (Mecklenburg Correctional Center, Virginia)

U.S. Appeals Court
CLASSIFICATION
CRITERIA
FAILURE TO
PROTECT

Pierson v. Hartley, 391 F.3d 898 (7th Cir. 2004). An inmate brought a § 1983 action against prison officials for failing to protect him from an assault by another inmate. Following a jury verdict in favor of the inmate, the district court entered judgment as a matter of law in favor of the officials. The inmate appealed. The appeals court reversed and remanded. The court held that evidence was sufficient to create a fact issue for the jury as to whether officials disregarded risk to the inmate by assigning the assailant to a low-security dorm and allowing him to remain there following his weapons conviction in a prison disciplinary system. According to the court, the officials probably reviewed a letter from a county sheriff warning of the assailant's aberrant behavior and calling him an escape and assault risk, and the officials were likely aware of the assailant's disciplinary conviction of weapon possession. The court also found that the officials knew that the assailant had neither one year in the general prison population nor ten years without any serious convictions of conduct violations, as required by prison policy for placement in a low-security level dorm. (Indiana State Prison)

U.S. District Court
CUSTODY LEVEL

Scott v. Federal Bureau of Prisons, 317 F.Supp.2d 529 (D.N.J. 2004). A prisoner who had filed a habeas corpus petition filed a motion for injunctive relief to compel the federal Bureau of Prisons (BOP) to make a determination of his eligibility for release to a community corrections center (CCC) pursuant to a former BOP policy. The district court granted injunctive relief, finding that the prisoner was denied due process by a Justice Department's Office of Legal Counsel memo, which misinterpreted the law, thereby unlawfully restricting the BOP's discretion in determining how a prisoner's level of custody was to be implemented. (Fed. Corr'l. Ctr., Fort Dix, New Jersey)

U.S. District Court
SEGREGATION
PRETRIAL
DETAINEE

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
PRETRIAL
DETAINEE
SEGREGATION

U.S. v. Lopez, 327 F.Supp.2d 138 (D.Puerto Rico 2004). A pretrial detainee who was placed in a special housing unit because he faced the death penalty, filed a motion for an evidentiary hearing on the conditions of his pretrial confinement. The district court held that the detainee's placement in a special housing unit solely because he faced the death penalty amounted to unconstitutional punishment. (Special Housing Unit, MDC-Guaynabo, Puerto Rico)

2005

U.S. District Court
SMOKING

Bartlett v. Pearson, 406 F.Supp.2d 626 (E.D.Va. 2005). A state prison inmate who was a non-smoker suffering from asthma, brought a § 1983 Eighth Amendment action against corrections officials alleging that being housed in a cell and housing unit with inmates who smoked endangered his health. The district court granted summary judgment in favor of the defendants. The court held the officials were not deliberately indifferent to the inmate's request for non-smoking housing and they were not indifferent to the inmate's asthma. The court noted that an allegation that exposure to environmental tobacco smoke (ETS) posed an unreasonable risk of serious damage to future health is cognizable under the Eighth Amendment. The prison had a policy aimed at limiting, when practicable, inmates' exposure to ETS, and they twice offered the inmate the option of residing in special or segregated housing. The inmate was moved to a non-smoking area after being housed with smokers for a total of 17 weeks, which the court found to be "not unreasonable" given the level of crowding at the prison and the fact that safety concerns took precedence over smoking preferences. (Sussex II State Prison, Virginia)

U.S. District Court
SEPARATION

Esmont v. City of New York, 371 F.Supp.2d 202 (E.D.N.Y. 2005). An arrestee filed a § 1983 action alleging that city health inspectors and police officers violated her constitutional rights during her arrest and detention for violations of a city nuisance law. The district court granted summary judgment in favor of the defendants. The court held that the officials were not deliberately indifferent to the arrestee's serious medical needs when they did not comply with the arrestee's request for hot tea during an asthma attack, but called emergency medical services instead. The female detainee was handcuffed to a cross bar outside of a holding cell for over 7 hours, with no place to rest her elbow. She was required to use a bathroom that was monitored by a security camera and an officer insisted on watching her while she used the bathroom. She sought medical

attention two days after her release for damage caused to her wrist by the handcuffing. The court held that the detainee was not exposed to excessive force, where the jail had only one cell and officials had a policy of not placing prisoners of opposite sexes in the cell together. The court noted that there was no evidence that the handcuffs were too tight, and the arrestee did not request that her handcuffs be loosened. (City of New York Police Department)

U.S. Appeals Court
DUE PROCESS
GANGS

Harbin-Bey v. Rutter, 420 F.3d 571 (6th Cir. 2005). A state prisoner filed a pro se § 1983 action alleging that his designation as a member of a security threat group without a hearing violated his constitutional rights. The district court dismissed the case and the prisoner appealed. The appeals court affirmed, finding that the prisoner's designation without a hearing did not violate equal protection due process, or the prisoner's right of access to the courts. Although the designation caused the prisoner to be excluded from community placement and placed on visitor restrictions, the court found that his designation was not based on his religious beliefs but rather was due to his gang affiliation. The court upheld the state's policy directive regarding classification of inmates as security threat group members, finding it was rationally related to the legitimate state interest of maintaining order in the prison. According to the court, identifying, reclassifying and separating prisoners who are members of groups that engage in the planning or commitment of unlawful acts or acts of misconduct "targets a core threat to the safety of both prison inmates and officials." (Alger Maximum Security Facility, Michigan)

U.S. District Court
CUSTODY LEVEL
DUE PROCESS

Harris v. Meulemans, 389 F.Supp.2d 438 (D.Conn. 2005). An inmate brought a § 1983 action against a warden and corrections officials to challenge, as a violation of procedural due process, a hearing that resulted in his classification as a "Security Risk Group Member." The district court dismissed the action for failure to state a claim. The court held that an inmate has no due process liberty interest in a particular security classification, accrual of good time credits, or placement in a less-restrictive half-way house or work-release setting. (Cheshire Corr'l Inst., Connecticut)

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 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. District Court
POLICY/
PROCEDURE
FAILURE TO
PROTECT

Little v. Shelby County, Tenn., 384 F.Supp.2d 1169 (W.D.Tenn. 2005). An inmate brought a § 1983 action against a county and sheriff, alleging that he had been raped in jail in violation of his Eighth Amendment rights. The county stipulated to liability and an order of injunctive relief was issued. Later, the district court found the county in contempt, and the county sought to purge itself of the contempt finding. The court entered a purgation order. The court held that the county and sheriff complied with the Eighth Amendment and purged themselves of contempt through the adoption of a structured reform to correct conditions that included violence, rape and gang control among inmates. In reaching its conclusion, the court considered whether officials took all reasonable steps within their power to comply with the order, which included whether they marshaled their own resources, asserted their highest authority, and demanded the results needed from subordinate persons and agencies in order to effectuate the course of action required by the order. The court praised the county, noting that it had adopted a focused, systemic and information-driven structural reform based on critical expert assessment of essential institutional functions. The county adopted a 14-point remedial scheme that included implementing direct supervision management of inmate cellblocks, improving population management, collecting and utilizing data, and installing an objective inmate classification system. (Shelby Co. Jail, Tenn.)

U.S. District Court
RELIGION

McRoy v. Cook County Dept. of Corrections, 366 F.Supp.2d 662 (N.D.Ill. 2005). A Muslim inmate at a county correctional facility brought a civil rights action under § 1983, alleging that his opportunities to practice his faith were restricted in violation of the Free Exercise Clause of the First Amendment. The district court granted summary judgment in favor of the defendants. The court held that the inmate's free exercise rights were not violated by the cancellation of Muslim services during lockdowns, staff shortages, and when no volunteer imams were available to preside over services. The court upheld the facility's decision not to create a Muslim-only living unit. The court noted that the inmate was permitted to pray in his cell using religious materials he was allowed to keep there, as well as being allowed to pray in the common area of his living unit. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
SEGREGATION
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. Appeals Court
SEPARATION
CLASSIFICATION
CRITERIA

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
LOWER BUNK

Reimann v. Frank, 397 F.Supp.2d 1059 (W.D.Wis. 2005). A state prison inmate sued various correctional officials under § 1983 alleging violations of his constitutional rights. The inmate petitioned for the right to proceed in forma pauperis and the district court granted the petition in part, and denied it in part. The court held that denial of weight training facilities was not an Eighth Amendment violation where there was no showing that a corrections official knew that weight training was necessary to treat the inmate’s femoral neuropathy and other leg ailments. The court also held that a warden and nurse practitioner did not violate the inmate’s Eighth Amendment rights by denying him access to indoor recreational facilities that were needed for the rehabilitation of his leg. They had been following a regulation that barred inmates who were on “low bunk restriction” due to medical conditions from indoor recreation. The court found that the inmate stated an Eighth Amendment claim with his allegations that a nurse practitioner countermanded an earlier order of a physician that only soft restraints were to be used. The court noted that there was a possibility that the nurse practitioner sought to deliberately inflict pain, rather than implement a differing medical assessment of the inmate’s condition. (Stanley Correctional Institution, Wisconsin)

U.S. District Court
ISOLATION

Scarver v. Litscher, 371 F.Supp.2d 986 (W.D.Wis. 2005). A state prison inmate sued officials seeking damages for their alleged indifference to his illness and challenging his conditions of confinement. The district court entered judgment in favor of the officials. The court held that the officials did not show deliberate indifference to the inmate’s mental illness condition, because he was examined and prescribed various antipsychotic medications. The inmate alleged that the only deficiency in his treatment was that officials failed to provide art supplies when they were requested. The court found that there were fact issues as to whether the inmate was subjected to conditions that were severe enough to violate the Eighth Amendment, but that the officials had qualified immunity from the inmate’s damages suit. The court held that placing the mentally ill inmate in a continuously-illuminated maximum security cell without windows was not clearly established to be an Eighth Amendment violation at the time they placed the inmate in the most extreme isolation section of the maximum security prison. (Wisconsin Secure Program Facility)

U.S. District Court
TRANSFER

Scott v. Garcia, 370 F.Supp.2d 1056 (S.D.Cal. 2005). An inmate brought a suit against a state corrections department alleging violation of the Americans with Disabilities Act (ADA), and against individual department employees for violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants in part and denied it in part. The court held that summary judgment was precluded on a claim that members of the prison’s classification committee violated the inmate’s Eighth Amendment rights by not recommending his transfer to a facility with acute hospital care, and on a claim that the prison system violated ADA by not allowing him a longer time to eat his meals or by allowing him to eat small frequent meals. (High Desert State Prison, Centinela State Prison, California)

U.S. Appeals Court
GANGS
TRANSFER

Westefer v. Snyder, 422 F.3d 570 (7th Cir. 2005). State prisoners brought a § 1983 action challenging their transfers to a higher-security prison. The district court granted summary judgment for the defendants and the prisoners appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoners' suit challenging transfers to a high security prison was not subject to dismissal for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), where the transfer review process was not available to prisoners in disciplinary segregation, and the prisoners' grievances were sufficient to alert the prison that the transfer decisions were being challenged. The court held that the alleged change in a prison policy that required transferring gang members to a high security facility did not constitute an ex post facto violation. The court ruled that the prisoners stated a claim for denial of due process, where the conditions at the high security prison were arguably different enough to give the prisoners a liberty interest in not being transferred there, and there was a dispute as to whether the state provided sufficient pre- and post-transfer opportunities for the prisoners to challenge the propriety of the transfers. The court held that the transfers did not violate the gang members' First Amendment associational rights, noting that prisoners had no right to associate with gangs. (Tamms Correctional Center, Illinois)

2006

U.S. District Court
CLASSIFICATION
DUE PROCESS
CUSTODY LEVEL

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

U.S. District Court
CLASSIFICATION
CRITERIA
DUE PROCESS
CUSTODY LEVEL

Austin v. Wilkinson, 502 F.Supp.2d 660 (N.D. Ohio 2006). State inmates in a super maximum security prison facility brought a class action against corrections officials under § 1983 alleging that procedures for transferring them to, and retaining them at, the prison violated due process. The district court ruled that the procedures denied due process and ordered modifications. Prison officials appealed. The appeals court affirmed in part, reversed in part and remanded. Certiorari was granted. The United States Supreme Court affirmed in part, reversed in part and remanded. On remand, the inmates moved for an order extending the court's jurisdiction over due process issues for one year, and the officials' moved to terminate prospective relief. The district court granted the inmates' motion and denied the officials' motion. (Ohio State Penitentiary)

U.S. Appeals Court
MENTALLY ILL
SEGREGATION

Clark-Murphy v. Foreback, 439 F.3d 280 (6th Cir. 2006). The estate of a state inmate who died of dehydration while in an observation cell brought two civil rights suits against prison employees, alleging deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. The district court denied qualified immunity to 15 corrections officers and they appealed. The appeals court held that a captain and sergeant who assisted the inmate after he collapsed outside the mess hall were not subjectively indifferent to his serious medical needs in violation of his Eighth Amendment rights, and thus were entitled to qualified immunity. The court noted that each perceived that the inmate faced risks to his psychological health and took reasonable steps to ensure that officers in charge of the inmate's care secured psychological services for him, and that neither officer had any further contact with the inmate or any reason to believe that the inmate's medical needs were not being met. The court found that prison officers and a psychologist who were in the position to perceive that the inmate, who was acting strangely and had been locked in an observation cell and had not received the psychological assistance he needed, were not entitled to qualified immunity on the Eighth Amendment claim alleging deliberate indifference given their interactions with the inmate and their apparent failure to go up the chain of command when a referral did not secure assistance for the inmate. The court also found that the officers and psychologist were not entitled to qualified immunity on the claim that they were deliberately indifferent to the hydration needs of the inmate who died of dehydration after six days in an observation cell, as they could have perceived a serious risk to the inmate

based on a heat wave, the fact that water was repeatedly cut off to inmate's cell during their shifts, and the reports of other inmates that the inmate had called out for water. The court found that a correctional nurse who worked just one shift shortly after the inmate's placement in an observation cell was entitled to qualified immunity from liability given her limited exposure to the inmate and the resulting absence of evidence that there was reason to believe that the nurse perceived that psychological help had not been obtained for the inmate or that his condition was deteriorating. (Bellamy Creek Correctional Facility, Ionia, Michigan)

U.S. District Court
CUSTODY LEVEL
DISCIPLINE
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
SUICIDE
SPECIAL NEEDS

Drake ex rel. Cotton v. Koss, 445 F.3d 1038 (8th Cir. 2006). The legal guardian for an incapacitated person who attempted to commit suicide while he was a pretrial detainee in a county jail, and a state department of human services sued a county and various officials in their individual and official capacities under § 1983, alleging violations of the Eighth and Fourteenth Amendments, and asserted a state law claim for negligence. The district court granted the defendants' motion for summary judgment and the guardian appealed. The appeals court affirmed. On rehearing, the appeals court held that county jailers' actions did not constitute deliberate indifference, and the jailers' decision not to assign a special need classification to the pretrial detainee was a discretionary decision protected by official immunity. According to the court, the jailers' actions of conducting well-being checks of the pretrial detainee only every 30 minutes, failing to remove bedding and clothing, and failing to fill the detainee's anti-anxiety prescription in a timely manner did not constitute deliberate indifference. The court found that the jailers' view of the risk was shaped by the diagnosis and recommendations of a psychiatrist, who indicated that the detainee was not suicidal but simply manipulative. The court noted that the jailers' decision not to assign a special need classification to the pretrial detainee, that would have required more frequent observation, was a discretionary decision rather than a ministerial duty, protected by official immunity. The detainee was discovered hanging by a bed sheet from a ceiling vent in his cell. He was not breathing and the jailers immediately set to work resuscitating him and then transported him to a nearby hospital. He survived, but suffered serious brain injuries as a result of the suicide attempt. (McLeod County Jail, Minnesota)

U.S. District Court
SEX OFFENDERS
CLASSIFICATION
CRITERIA

Fox v. Lappin, 409 F.Supp.2d 79 (D.Mass. 2006). A federal prisoner brought suit against the Director of the Federal Bureau of Prisons and a warden, seeking declaratory judgment that his classification as a sex offender based on a 1981 state sexual assault conviction was improper. The prisoner also challenged the Bureau's failure to consider him for community center placement based on his failure to participate in a sex offender program. The district court held that a federal prisoner cannot be designated as a sex offender based on a state sex offense for purposes of the federal statute requiring that notice be given to state and local authorities of an inmate's release if the inmate has been designated as a sex offender, and that designated sex offender register in the state in which he will reside, because the Attorney General's authority under the statute is limited to designating federal offenses as sex offenses. The court found that as a matter of inmate classification, a prisoner's classification as a sex offender on basis of state sexual assault conviction was not an abuse of discretion. The court held that the BOP policy that categorically excludes inmates with sex offender safety factors from placement in community corrections centers is a permissible interpretation of the rule and that the BOP did not abuse its discretion in denying an inmate designated as a sex offender placement in a community corrections center based on his failure to participate in a mandatory sex offender program. The court noted that the federal statute governing pre-release custody of a federal prisoner does not create a liberty interest in the prisoner's transfer to the less restrictive environment of community center placement, as the statute does not mandate community center placement nor any placement in a less restrictive environment, it merely insures placement under pre-release conditions except where no such placement is practicable. (Federal Medical Center, Devens, Massachusetts)

U.S. Appeals Court
TRANSFER
LIBERTY
INTEREST

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. District Court
LIBERTY
INTEREST

Gaskins v. Johnson, 443 F.Supp.2d 800 (E.D.Va. 2006). A state inmate, proceeding pro se, filed a petition for a writ of habeas corpus challenging the denial of good conduct credits. The district court dismissed the petition. The court held that the appropriate remedy for the inmate's challenge to the denial of good conduct credits was an action pursuant to § 1983, not a petition for a writ of habeas corpus. The court found that the inmate did not have a protected liberty interest in either maintaining a current classification or obtaining a new classification, as required to prevail on a § 1983 claim. (Powhatan Correctional Center, Virginia)

U.S. Appeals Court
SEPARATION
CELL ASSIGNMENT
RACIAL DISCRIMINATION

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
CELL ASSIGNMENT
TRANSFER

Moots v. Lombardi, 453 F.3d 1020 (8th Cir. 2006). A state prisoner sued various prison officials, alleging that they were deliberately indifferent to his serious mental health needs and that they retaliated against him for filing a grievance. The district court entered summary judgment for the officials and the prisoner appealed. The appeals court affirmed and held that: (1) the failure to house the prisoner with cellmates of his choosing did not constitute deliberate indifference to his serious medical needs, where the officials had ample reasons for their action, including safety concerns, and the officials had no reason to know that their housing choices would have a serious negative impact on the prisoner's mental health; (2) any failure to ensure that the prisoner's medications were promptly transferred to solitary confinement did not constitute deliberate indifference to his serious medical needs, absent a showing by the prisoner that he suffered harm as a result; (3) a conduct violation for fighting did not constitute retaliatory discipline, where the prisoner was bruised around his eye, and the fact that a conduct violation was later expunged did not mean that there was not some evidence for its imposition; and (4) transfer to another prison did not constitute disciplinary retaliation, where he disputed neither the computation of his classification score nor the conclusion that his score made him ineligible to remain at the prison from which he was transferred. (Missouri Eastern Correctional Center)

U.S. District Court
LETHAL INJECTION

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. Appeals Court
LIBERTY
INTEREST

Myron v. Terhune, 457 F.3d 996 (9th Cir. 2006). A state prisoner brought a § 1983 action against several correctional officers and medical personnel at a prison. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that a state regulation governing the security classification of prisoners did not give the state prisoner a

liberty interest, protected by the due process clause, in the security level to which he was classified, noting that the regulation provided that prison officials retained discretion in making placement decisions. (Salinas Valley State Prison, California)

U.S. Appeals Court
CELL ASSIGNMENT
SUICIDE
MENTALLY ILL

Perez v. Oakland County, 466 F.3d 416 (6th Cir. 2006). The father and personal representative of an inmate's estate brought a § 1983 action against a county, sheriff department, sheriff deputies, inmate caseworker, and psychiatrist alleging the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring while he was being held in a county jail, leading to the inmate's suicide. The eighteen-year-old inmate had hanged himself from a bedsheet tied to a vent in his single cell. The district court granted the defendants' motions for summary judgment and the father appealed. The appeals court affirmed. The court held that a county policy allowing a caseworker, who was not medical personnel, to make decisions regarding housing assignments for mentally ill inmates did not demonstrate deliberate indifference. The court noted that the caseworker was well-trained in mental health needs and suicide, nothing established that the policy had ever resulted in suicide or attempted suicide by another prisoner in the county jail, and the father's expert stated that prisoner screening and placement decisions were commonly made by non-medical officials. The court held that the caseworker was entitled to qualified immunity because it was not clearly established at the time of the suicide that a county jail caseworker could be found to be deliberately indifferent to an inmate's medical needs by moving him to single cell housing without first consulting the inmate's treating physician or the jail's psychiatrist, even though the inmate had threatened suicide and attempted suicide in the past. The court noted that the inmate was not deemed suicidal when he was moved to a single cell, the inmate was not generally deprived of medical treatment involving his mental health needs, and prisoners had no general right to be correctly screened for suicidal tendencies. (Oakland County Jail, Michigan)

U.S. Appeals Court
LOWER BUNK
SPECIAL NEEDS

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 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. District Court
TRANSFER
CUSTODY LEVEL

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; 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
JUVENILE
HOMOSEXUALS
DUE PROCESS

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. (Hawai'i Youth Correctional Facility)

U.S. District Court
GANGS
DUE PROCESS

Stewart v. Alameida, 418 F.Supp.2d 1154 (N.D.Cal. 2006). A state prison inmate brought a § 1983 action against California corrections officials alleging violation of his First and Fourteenth Amendment associational and due process rights, claiming that his validation as a gang associate kept him in a secure housing unit.

Officials moved for summary judgment and the district court granted the motion. The court held that state regulations providing for gang validation based on association bore a rational relation to a penological interest in institutional security and that the full accommodation of inmate's associational rights would seriously hinder security and compromise safety. According to the court, an interview after he was gang-validated afforded the inmate an adequate procedural remedy consistent with due process. The court found that any of three photographs of the inmate posing with inmates, some of whom were validated gang associates and one of whom was a validated gang member, supported the inmate's gang validation consistent with due process. (San Quentin Adjustment Center, California)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
DISCIPLINE

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 Dept. of Correction)

2007

U.S. Appeals Court
GANGS
SOLITARY CONFINEMENT

Ashford v. U.S., 511 F.3d 501 (5th Cir. 2007). An inmate sued the United States under the Federal Tort Claims Act (FTCA) alleging that the Federal Bureau of Prisons (BOP) was negligent in placing him in a prison population with a gang member who had attacked him in the past. The district court entered summary judgment for the BOP and the inmate appealed. The appeals court reversed and remanded. The court held that the discretionary-function exception to FTCA did not apply if the inmate raised a concern at a prison intake interview that he would be endangered if he were placed in the prison population with the gang member. The court noted that a prison policy required that the inmate be put into solitary confinement pending an investigation if he raised such a concern, leaving prison officials with no discretion. According to the court, genuine issues of material fact existed as to whether the inmate raised a concern at the prison intake interview, precluding summary judgment. (Federal Bureau of Prisons)

U.S. District Court
CUSTODY LEVEL
TRANSFER
LIBERTY INTEREST

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
LOWER BUNK
POLICY/PROCEDURE

Felix-Torres v. Graham, 521 F.Supp.2d 157, (N.D.N.Y. 2007). A prisoner filed a pro se § 1983 suit against the New York Department of Correctional Services (DOCS), alleging that named DOCS employees and four "John Doe" defendants violated his constitutional rights under the Eighth and Fourteenth Amendments, related to injuries suffered from a fall from his assigned upper bunk during a diabetic low blood sugar reaction and seizure. The named employees moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the prisoner sufficiently alleged that prison officials were personally involved in the deprivation of his Eighth Amendment rights and that they were not protected by qualified immunity. The court found that the prisoner sufficiently alleged that a nurse administrator was deliberately indifferent to a risk for the prisoner and that the prisoner's allegations were sufficient for a § 1983 claim of deprivation of rights. According to the court, the prisoner sufficiently alleged the "personal involvement" of a superintendent and deputy superintendents of the prison based on the officials' creation and administration of prison procedures for assignment of inmates to upper bunks, and by supervision of subordinates who assigned the prisoner to an upper bunk despite his known medical condition. (Auburn Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROTECT

Guzman v. Sheahan, 495 F.3d 852 (7th Cir. 2007). A pretrial detainee brought a § 1983 action against county jail officials and a sheriff alleging violations of his right to due process as guaranteed by the Fourteenth Amendment. The district court granted the defendants' motion for summary judgment and the detainee appealed. The appeals

court affirmed. The court held that a corrections officer was not deliberately indifferent to the detainee's safety and welfare, as required for the detainee's § 1983 due process claim, arising out of a fight with another inmate and resulting in serious injury to the detainee. The court noted that the detainee had never before interacted with the inmate involved in the altercation nor had he ever communicated to the corrections officer or to anyone else that the inmate might be a specific danger to him. Immediately after the fight broke out, the officer called for back-up. The court held that there was no evidence that the sheriff had knowledge that the classification and reclassification of inmates were being poorly implemented by corrections officers, as required for the detainee's § 1983 official capacity claim against the sheriff. (Cook County Jail, Illinois)

U.S. District Court
CELL ASSIGNMENT
POLICY/PROCEDURE
PRETRIAL DETAINEE

Jenkins v. DeKalb County, Ga., 528 F.Supp.2d 1329 (N.D.Ga. 2007). Survivors of a county jail detainee who had died as the result of an apparent beating by a fellow inmate brought a § 1983, Eighth and Fourteenth Amendment action against a county sheriff in his individual capacity, and against corrections officers. The defendants moved for summary judgment on qualified immunity grounds. The district court granted the motion. The 71 year old pretrial detainee suffered from multiple mental illnesses including schizophrenia and dementia, which reportedly manifested themselves in the form of delusions, paranoia, bizarre thoughts and behavior, physical violence, and verbal outbursts that included racial epithets. The court held that county corrections officers' putting the inmate into a cell different from the one to which he had been assigned, allegedly leading to the beating death of a pretrial detainee who shared the same cell, did not violate the detainee's right against cruel and unusual punishment. The court noted that even though the action violated a jail policy, the policy was created primarily to keep track of inmates' placement, not to maintain inmate safety, and there was no evidence of widespread inmate-on-inmate violence due to the misplacement of inmates. The court found that the plaintiffs failed to show that the sheriff's alleged poor training and supervision of corrections officers led to the officers' allegedly inadequate reaction to the incident between the jail inmates, which ended with the beating death of one inmate. The court also found that the sheriff's failure to comply with a court order to transfer the pretrial detainee to a mental health facility did not show supervisory liability because the purpose of the transfer order was likely to get the detainee treatment for mental illness, not to protect him. The court held that the county corrections officers were acting within the scope of their duties when they mistakenly placed a fellow inmate in the same cell with a pretrial detainee, and thus the officers were eligible for qualified immunity in the detainee's survivors' § 1983 Eighth and Fourteenth Amendment action. The court noted that the fact that the mistake violated jail policies or procedures did not mean that the officers were not exercising discretionary authority. (DeKalb County Jail, Georgia)

U.S. Appeals Court
CUSTODY LEVEL
DUE PROCESS
LIBERTY INTEREST

Myron v. Terhune, 476 F.3d 716 (9th Cir. 2007). A state prisoner brought a § 1983 action against several correctional officers and medical personnel at a prison. The district court dismissed the claims and the prisoner appealed. The appeals court affirmed. The court held that California regulations governing security classification of prisoners and subsequent facility placement did not give the state prisoner a liberty interest, protected by the due process clause, in placement at a facility consistent with his security level. According to the court, placement at a higher security level facility than an inmate's classification did not present an atypical and significant hardship, as there was no showing that conditions at the higher security prisons differed significantly from those imposed upon inmates in lower level prisons or in administrative segregation and protective custody. The court noted that there was no showing that the prisoner's classification would invariably affect the duration of his sentence. The court concluded that the prisoner's allegedly improper classification to a higher-level security facility than indicated by his individual security classification did not violate the Eighth Amendment, as classification to such a facility did not amount to the infliction of pain. (Salinas Valley State Prison, California)

U.S. Appeals Court
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
CELL ASSIGNMENT
FAILURE TO PROTECT
SEPARATION

Rigano v. County of Sullivan, 486 F.Supp.2d 244 (S.D.N.Y. 2007). An inmate brought § 1983 and negligence claims against a county, county sheriff, jail administrator, corrections officers and fellow inmates, alleging that he was harassed and beaten by the inmate defendants while serving his sentence at the county jail, in violation of the Eighth Amendment. The district court granted summary judgment for the defendants. The court held that the county jail's procedure for determining where and in what manner new inmates were to be housed did not amount to deliberate indifference to the inmate's safety, as would violate the Eighth Amendment, despite the fact that the inmate was allegedly harassed and physically assaulted by other inmates in the cell block where he was placed. The court noted that, pursuant to the jail's placement procedure, corrections officers asked each inmate a series of questions to assist in placing them, including

questions about any enemies the inmate had in the current prison population, the inmate failed to indicate when asked any reason why he should not be placed in the general prison population, and the officers had no reason to know that the inmate would be harassed and assaulted by other inmates. (Sullivan County Jail, New York)

U.S. Appeals Court
SEGREGATION
DUE PROCESS

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)

2008

U.S. District Court
CIVIL COMMITMENT
DOUBLE CELLING
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. District Court
CLASSIFICATION
CRITERIA
PRETRIAL DETAINEE

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

U.S. Appeals Court
CELL ASSIGNMENT
EQUAL PROTECTION
RACIAL
DISCRIMINATION

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. Appeals Court
FAILURE TO PROTECT
GANGS
SEPARATION

Howard v. Waide, 534 F.3d 1227 (10th Cir. 2008). An inmate brought claims against several Colorado Department of Corrections (CDOC) employees and a grievance officer pursuant to § 1983, alleging deliberate indifference in violation of the Eighth Amendment. The district court granted the grievance officer's motion to dismiss and granted the other defendants' motions for summary judgment, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate established an objective substantial risk of serious harm, as required for his Eighth Amendment deliberate indifference claim, by alleging that he had previously been targeted by a notorious prison gang because of his build and sexual orientation, that he was threatened, sexually assaulted, and prostituted against his will by members of this gang, and was later transferred to a different facility for his own safety, and, that after arriving at the new facility, he was identified by a member of the same prison gang who had assaulted him in the past and was housed in a less-restrictive area of the prison where it was easier for gang members to assault him. The court found that summary judgment was precluded by genuine issues of material fact as to whether the corrections' employees had subjective knowledge of a significant risk of substantial harm to the inmate. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the employees responded to the known risk to the inmate by a prison gang in a reasonable manner. (Sterling Correctional Facility, Colorado)

U.S. District Court
FAILURE TO PROTECT

Jones v. Oakland County, 585 F.Supp.2d 914 (E.D.Mich. 2008). The personal representative of an arrestee's estate brought an action against a county and two employees of the jail where the arrestee died of heart failure. The arrestee had been brought to the jail on a bench warrant for failing to appear at a court proceeding. Two days after her admission she was found unresponsive in her cell and could not be revived. It was subsequently determined that she died of heart failure (ischemic cardiomyopathy). The defendants moved for summary

judgment and the district court granted the motion. The court held that neither a jail interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, nor a jail nurse, who first came into contact with the arrestee when she was summoned to assist in CPR and other efforts to revive the arrestee after she was found unresponsive in her jail cell, were deliberately indifferent to the arrestee's serious medical needs. According to the court, neither employee perceived a substantial risk to the arrestee's health and well-being and yet disregarded that risk, and any purported negligence in the interviewer's assessment of the arrestee's medical needs did not rise to the level of deliberate indifference. The court held that the conduct of the interviewer, whose only contact with the arrestee was a classification interview lasting between five and fifteen minutes, did not amount to "gross negligence" within the meaning of Michigan's governmental immunity statute, and therefore she was not liable for failing to secure immediate medical treatment for a condition that shortly would result in the arrestee's death. (Oakland County Jail, Michigan)

U.S. Appeals Court
SEPARATION
SEX OFFENDERS

Sain v. Wood, 512 F.3d 886 (7th Cir. 2008). A civilly-committed sex offender brought a § 1983 action alleging that his conditions of confinement violated his Fourteenth Amendment due process rights. The district court granted summary judgment in favor of some defendants and denied a motion for summary judgment based on qualified immunity for the clinical director of a detention facility. The clinical director appealed. The appeals court reversed and remanded. The court held that the district court did not commit plain error in assuming implicitly that the clinical director was entitled to assert qualified immunity as a state actor. The court held that the failure of the clinical director to transfer the offender to the newer, more comfortable and sanitary unit of the facility did not amount to deliberate indifference, even assuming that the director knew of the allegedly poor conditions of confinement that included cockroach infestations. The court noted that the director decided that a transfer would contravene the offender's treatment objectives because the rooms in the new unit were double occupancy. The court noted that the offender had refused to participate in sex offender treatment programs and he had a history of sexual aggression with other inmates. (Joliet Treatment and Detention Facility, Illinois Department of Human Services)

U.S. District Court
RELIGION
TRANSFER

Shilling v. Crawford, 536 F.Supp.2d 1227 (D.Nev. 2008). A Washington prisoner who was being housed in Nevada brought an action against prison officials, claiming violation of his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted the officials' motion for summary judgment. The court held that prison authorities imposed a substantial burden on the prisoner's religious beliefs when they conditioned the prisoner's receipt of a kosher meal on his relinquishment of the benefits of living in a lower-security facility. But the court held that even if the prisoner could bring an individual capacity claim against prison officials under RLUIPA, the officials would be entitled to qualified immunity since it would not have been clear to a reasonable official in April 2004 that offering the prisoner a transfer to a higher security prison to accommodate his religious diet would violate his rights under RLUIPA. (High Desert State Prison, Nevada, and Washington Department of Corrections)

U.S. District Court
SEPARATION

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 there was no evidence that jail employees were aware of facts from which an inference could be drawn that the detainee faced a serious risk of harm by being celled with killers, robbers, and psychopaths, or that they actually drew such an inference, as required to establish deliberate indifference. (Douglas County Correctional Center, Nebraska)

2009

U.S. District Court
SUICIDE

Cuebas v. Davila, 618 F.Supp.2d 124 (D.Puerto Rico 2009). The mother of a man who committed suicide in a jail cell filed a § 1983 action on behalf of herself, her minor daughter, and her deceased son, claiming deprivation of constitutional rights by the arresting police officers and their supervisors, and seeking compensatory damages for pain and suffering due to the loss of her mentally ill son. The district court dismissed the case in part, and declined to dismiss in part. The court held that the mother, as sole heir of her deceased son, under Puerto Rico law, had Article III standing to bring a § 1983 suit on behalf of her son against the police officers and supervisors for alleged constitutional violations, since the mother inherited her son's cause of action. The court found that the mother's allegations that arresting officers and their superiors were deliberately indifferent to her son's risk of suicide in his jail cell following his arrest were sufficient to state a § 1983 claim that the son's due process rights were violated under the Fourteenth Amendment. The court held that the mother's allegations that the police officer in charge of detainees was deliberately indifferent to her son's risk of suicide were factually sufficient to state a § 1983 claim that the officer violated her son's due process rights, including allegations that the officer was aware of the likelihood that the arrestee might commit suicide, and that the officer did not take obvious steps to prevent the arrestee's suicide. The mother had explained to the officers that her son was mentally ill and that he had recently attempted suicide. The son was placed in a cell after his shoes and belt had been removed. At some point during that night he committed suicide. The mother alleged that he was not properly monitored while being held in custody, as he should have been, by the officers who were aware he was suicidal. She alleged that his cell was not adequately monitored even though the police officers who arrested him and who monitored him knew that he was mentally ill and had recently attempted suicide. (Puerto Rico Police Department, Salinas Police Headquarters)

U.S. District Court
CLASSIFICATION
CRITERIA
POLICY/PROCEDURE

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

U.S. District Court
LIBERTY INTEREST
SEX OFFENDERS

Gilmore v. Bostic, 636 F.Supp.2d 496 (S.D.W.Va. 2009). A state prison inmate brought an action against a probation officer, the state parole board, and state correctional facility employees, asserting that his constitutional rights were violated by allegedly false information in his presentence report for a burglary conviction and in the prison file which resulted in the inmate's classification in the state penal system at a higher level than was appropriate and in a sex offender designation. The district court held that: (1) the board was entitled to absolute immunity; (2) employees were not liable in their official capacities on claims for compensatory relief but the employees sued in their individual capacities were liable; (3) the inmate stated a violation of a protected liberty interest in parole release under the state constitution; (4) the inmate stated a claim under the state constitution for violation of a protected liberty interest in not being required to undergo sex offender treatment; and (5) the inmate adequately alleged a physical injury required to recover for mental or emotional injury. (Kanawha County Adult Probation Department, West Virginia Board of Probation and Parole, Huttonsville Correctional Center, West Virginia)

U.S. 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
LOWER BUNK

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. District Court
DUE PROCESS
EQUAL PROTECTION
LIBERTY INTEREST
POLICY/PROCEDURE
TRANSFER

Holland v. Taylor, 604 F.Supp.2d 692 (D.Del. 2009). A state prisoner brought a pro se § 1983 action against a Department of Correction (DOC) and DOC officials, alleging violations of his constitutional rights to equal protection and due process, deliberate indifference, cruel and unusual punishment, and false imprisonment. The prisoner moved to appoint counsel, and the defendants brought a renewed motion for summary judgment. The district court granted the motion for summary judgment and denied the motion to appoint counsel. The court found that neither Delaware law nor Delaware Department of Correction regulations create a liberty interest, the denial of which would constitute a due process violation, in a prisoner's classification within an institution. The court found that the state prisoner had no constitutionally protected right to work release, and thus, neither the alleged failure of a multi-disciplinary team (MDT) member to inform the inmate of a disciplinary review meeting regarding his alleged work release program violation, nor the prisoner's transfer following completion of the sentence imposed in connection with the disciplinary meeting, to another facility to await return to the work-release facility, violated the prisoner's due process rights, absent any atypical or significant hardship by being housed at the other facility as compared to a work-release facility. (Delaware Correctional Center)

U.S. District Court
PROTECTIVE CUSTODY

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. Appeals Court
CLASSIFICATION
CRITERIA
SEPARATION

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. The father was arrested for having no proof of auto insurance and was placed in a cell in the Alpha Intake Unit (AIU) after it was determined that he would be unable to go before a county judge that day. When the inmate who murdered the father arrived at the jail, he was booked by a county corrections officer under the booking policy at the time that required the officer to ask an arriving inmate several questions, to observe the inmate's demeanor, to review any additional information provided about the inmate, and then to classify the inmate as either high or low risk. Under the policy, if there was no information provided about the inmate's previous history, the policy did not require the officer to seek such information. Incoming inmates classified as low risk, including those transferred from other correctional facilities, were placed in the AIU for a 72 hour observation period, after which their classification was reviewed. If classified as high risk, inmates were placed in a separate housing unit. The booking officer was unaware that the prison inmate had been in segregation 23 hours a day at a high security prison, that he had a history of mental illness, and that the assault related to his court appearance had been an unprovoked, violent attack on a fellow inmate. The officer classified him as low risk, based on the information she had and the inmate's calm, polite demeanor during the booking process. (Sherburne County Jail, Minnesota)

U.S. Appeals Court
FAILURE TO PROTECT
SEPARATION

Norman v. Schuetzle, 585 F.3d 1097 (8th Cir. 2009). A prisoner brought a § 1983 claim against various prison officials for their alleged failure to protect him from an attack by a fellow inmate. The district court granted qualified immunity to all but four officials. The four officials appealed. The appeals court reversed and remanded. The appeals court held that: (1) the warden did not violate the Eighth Amendment rights of the prisoner when an inmate with a violent history was allowed to remain in the general population after an incident in which he cut a "C" into the prisoner's hair to identify him as child molester while performing a haircut; (2) the first case worker did not violate the prisoner's Eighth Amendment rights when he failed to take additional security measures; (3) the second worker did not violate the prisoner's Eighth Amendment rights when she did nothing after seeing a logbook entry; and (4) it was not clearly established that the director's actions of allowing other inmates to view complaints would unreasonably subject the prisoner to a threat of substantial harm. (North Dakota State Penitentiary)

U.S. Appeals Court
RELIGION
SEGREGATION

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

U.S. District Court
HANDICAP

Thomas v. Pennsylvania Dept. of Corr., 615 F.Supp.2d 411 (W.D.Pa. 2009). A state prison inmate who was an above-the-knee amputee brought a § 1983 action against the Pennsylvania Department of Corrections and individual corrections officials and medical personnel, alleging that denial of his request for a handicap cell, and the delay in replacing and inadequate replacement of his prosthesis, violated the Eighth Amendment, Rehabilitation Act, Americans with Disabilities Act (ADA), and state law. The district court granted summary judgment for the defendants. The court found that there was no evidence that state corrections officials were aware that the amputee prisoner was at risk of assault at the hands of fellow inmates due to the denial of his request for a handicap cell, as required to support the prisoner's Eighth Amendment failure-to-protect claim against officials. Except for a single reference to an altercation with a fellow prisoner, the prisoner's requests for a handicap cell included no indication that the prisoner was concerned about being attacked, only that he was having difficulty moving about in a standard cell. According to the court, the state medical personnel's denial of the amputee prisoner's requests for a handicap cell did not amount to deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. Each request for a handicap cell was reviewed, but a determination was made that since the prisoner ambulated well with crutches and subsequently was fitted with a prosthesis, a handicap cell was medically unnecessary. The court found that the prisoner's disagreement with that determination did not render it deliberate indifference. (State Correctional Institution at Camp Hill, State Correctional Institution at Houtzdale, Pennsylvania)

U.S. District Court
RECLASSIFICATION
SECURITY
CLASSIFICATION
TRANSFER

U.S. v. Rojas-Yepes, 630 F.Supp.2d 18 (D.D.C. 2009). A prisoner who was being held in a medium-security facility after his extradition from Colombia and who was pending trial, moved to modify his jail conditions after the Department of Corrections (DOC) received a copy of the indictment and he was therefore reclassified as a "maximum custody" prisoner and placed in a special management unit (SMU) pending his transfer to a maximum-security facility. The district court denied the motion. The court held that the prisoner's claim for modification of his jail conditions would be construed as a habeas petition. The court found that the prisoner lacked a property or liberty interest in his classification and placement. The court noted that classification was not a fixed entitlement, but rather was revisited every 90 days based on changed conditions and new facts. According to the court, the DOC did not violate the prisoner's equal protection rights by reclassifying him, where the prisoner was reclassified based, not on national origin, but rather on the nature of the charges against him and how much power and influence he was alleged to have within the charged drug-trafficking conspiracy. The court found that the DOC's classification procedures were rationally related to a legitimate interest in maintaining order and safety in detention facilities. (Correctional Treatment Facility, District of Columbia Jail)

2010

U.S. Appeals Court
SUICIDE
FAILURE TO PROTECT

Clouthier v. County of Contra Costa, 591 F.3d 1232 (9th Cir. 2010). The estate of a pretrial detainee brought a § 1983 action against a county, mental health specialist, and two sheriff's deputies alleging they violated the detainee's due process rights by failing to prevent his suicide while he was confined. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the estate had to show that the detainee was confined under conditions posing a substantial risk of serious harm and that correction officers were deliberately indifferent to that risk. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the mental health specialist at the jail, who was on notice of the pretrial detainee's suicidal condition, was deliberately indifferent to a substantial risk of harm to the detainee when she removed the detainee from an observation log and told deputies that the detainee could be given regular clothes and bedding. According to the court, it was clearly established at the time of detention that a reasonable mental health professional would not have removed key suicide prevention measures put in place by a prior mental health staff member, and therefore the specialist was not entitled to qualified immunity. The court found that the estate failed to establish that a sheriff's deputy at the jail knew that moving the detainee to the general population in the jail posed a substantial risk of serious harm to the detainee, where the deputy only knew that the detainee had missed meals and free time, and that the detainee had been taken off an observation log. The court noted that the deputy spoke to the detainee all weekend and noted he had a positive outlook on wanting to get out of the room, and earlier that day the mental health specialist found that the detainee was not actively suicidal at the time. The court held that the estate failed to establish that another sheriff's deputy knew that the detainee was suicidal and deliberately ignored that risk, where the deputy knew only that the detainee was suicidal and needed to be on 15-minute checks and the mental health specialist told the deputy to give the detainee his regular clothes and bedding. The court noted that nothing indicated that the deputy saw the detainee's knotted sheet. According to the court, the county did not have a longstanding custom or practice of moving pretrial detainees from an observation cell into the general population without consultation with mental health staff, or a longstanding practice of miscommunication between mental health staff and custodial staff. The court found no pattern of repeated wrongful conduct by county staff, and nothing that indicated another suicide resulted from the improper transfer of a detainee. (Contra Costa County Martinez Detention Facility, California)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
LENGTH OF
SEGREGATION
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
TRANSEXUAL

Fields v. Smith, 712 F.Supp.2d 830 (E.D.Wis. 2010). Wisconsin Department of Corrections (DOC) inmates, who were diagnosed with Gender Identity Disorder (GID), brought a § 1983 action against DOC officials, alleging, among other things, that the officials violated the Eighth and Fourteenth Amendments by enforcing a statutory provision preventing DOC medical personnel from providing hormone therapy or sexual reassignment surgery to inmates with GID, and from evaluating inmates with GID for possible hormone therapy. The inmates sought a permanent injunction barring enforcement of the statute against them and other inmates. The court held that: (1) GID or transsexualism was a "serious medical need" for the purposes of the Eighth Amendment; (2) as matter of first impression, enforcement of the statute against the inmates violated the Eighth Amendment; (3) as matter of first impression, the statute was facially unconstitutional under the Eighth Amendment; (4) the possibility that certain inmates seeking treatment for gender issues might have had conditions not requiring hormone therapy did not repel a facial challenge to the statute; and (5) as matter of first impression, the statute violated the Equal Protection Clause both as applied to the inmates and on its face. The district court granted the motion, issuing a "...permanent injunction that restrains the defendants from enforcing or attempting to enforce the provisions of Wis. Stat. § 302.386(5m), by direct, indirect or other means, against any prisoner to whom the statute would otherwise apply and specifically against the plaintiffs." (Wisconsin Department of Corrections)

U.S. District Court
DUE PROCESS
LENGTH OF
SEGREGATION
LIBERTY INTEREST
POLICY/PROCEDURE
PRETRIAL DETAINEES
PUNITIVE SEGREGATION
RECLASSIFICATION

Ford v. Clarke, 746 F.Supp.2d 273 (D.Mass. 2010). An inmate brought an action challenging his confinement in a Departmental Disciplinary Unit (DDU) at a prison while a pretrial detainee and, later, as a convicted felon serving his sentence. The Department of Corrections' employees filed a motion for summary judgment, which the court allowed in part and denied in part. The court held that the detainee's incarceration in the DDU was intended as punishment, and thus, the Department of Corrections violated the detainee's substantive due process rights. According to the court, the Deputy Commissioner of the Prison Division of Department of Corrections stated, when he placed the pretrial detainee in DDU after his criminal sentence had been completed, that it was meant as punishment and deterrence, as well as for the safety and security of the institution and staff. The detainee's confinement in DDU was imposed as part of 10-year disciplinary sanction that he had received while serving his prior criminal sentence, and the Commissioner never reassessed the detainee's threat to the institution or others, but, instead relied on conduct which had occurred years earlier. According to the court, the detainee retained a liberty interest in freedom from disciplinary confinement without due process, even after he pled guilty and was sentenced, and thus, the Deputy Commissioner of Correction's failure to provide the detainee with any procedural protections at the time he was returned to DDU as a pretrial detainee, or at the time he was placed in the DDU as a convicted prisoner, violated his procedural due process rights. (Departmental Disciplinary Unit MCI-Cedar Junction, Massachusetts)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
TRANSFER

Hawkins v. Brooks, 694 F.Supp.2d 434 (W.D.Pa. 2010.) A state prisoner brought a pro se § 1983 action against various prison officials and corrections officers, alleging retaliation, harassment, due process violations, defamation of character, and mental anguish. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's conduct of pressing charges against a corrections officer who the prisoner claimed raped and impregnated her and complaining about other officers' alleged harassment amounted to a "constitutionally protected activity," as required for the prisoner to state a § 1983 retaliation claim. The court found that corrections officers' alleged conduct of withholding the prisoner's incoming and outgoing mail in retaliation for the prisoner's pressing rape charges against an officer at another prison amounted to an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim against the officers. But the court found that a prison official's alleged conduct of reassigning the prisoner to a different unit in the same prison did not rise to the level of an "adverse action," as required to establish a prima facie pro se § 1983 retaliation claim. The court found that the prisoner had no liberty interest in her place of confinement, transfer, or classification, and thus, prison officials' alleged refusal to have the prisoner transferred to an out-of-state institution did not violate her due process rights. The court found that the prisoner's assertions that she made supervisory prison officials aware of the harassment and retaliation she allegedly suffered at the hands of correctional officers as a result of her pressing rape charges against a correctional officer at another facility, and that none of the supervisory officials offered assistance or took any corrective action, were sufficient to state a claim for supervisory liability, in her § 1983 retaliation action. (State Correctional Institution at Cambridge Springs, Pennsylvania)

U.S. District Court
CLASSIFICATION
CRITERIA
SEGREGATION
RELIGION

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

U.S. District Court
FAILURE TO PROTECT

Jackson v. Stevens, 694 F.Supp.2d 1334 (M.D.Ga. 2010.) An inmate brought a § 1983 suit against a prison official asserting an Eighth Amendment deliberate indifference claim. The official moved for summary judgment and the district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison official had subjective knowledge of a serious risk of harm to the inmate from a second inmate, whom the official heard say that he would try to kill or harm the first inmate if they were put in a cell together, and whether the official disregarded the risk when she admonished the second inmate before placing him in a cell with the first inmate. Immediately after the official closed the cell door, the second inmate immediately hit the inmate. (Washington State Prison)

U.S. Appeals Court
PRETRIAL DETAINEE
SOLITARY
CONFINEMENT

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
CLASSIFICATION
HANDICAPPED INMATES
HARASSMENT
MEDICAL CARE
WORK

Jones v. Michigan, 698 F.Supp.2d 905 (E.D.Mich. 2010). A state inmate brought a § 1983 action against a state correctional facility's classification director and a correction officer. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate's grievance against the classification director and correction officer gave fair notice of his claim that he was harassed and forced to perform work as a sports equipment handler, despite fact that he was wearing a neck brace and walking with a cane due to injuries arising from an automobile accident. But the court found that the correction officer was not deliberately indifferent to the inmate's injuries, in violation of the Eighth Amendment, where the officer was never told by the inmate that he could not perform work duties as a sports equipment handler. Similarly, the classification director was not deliberately indifferent to the inmate's injuries, in violation of the Eighth Amendment, where the director was never advised of an accommodation notice or of the physician's diagnoses that the inmate could not perform work duties. (Saginaw Correctional Facility, Michigan)

U.S. District Court
WORK

Lymon v. Aramark Corp., 728 F.Supp.2d 1222 (D.N.M. 2010). A former state prisoner brought an action against the New Mexico Department of Corrections (NMDOC), its secretary, prison officers, the private company that managed a prison kitchen, and two of the company's employees, alleging various constitutional claims and negligence under the New Mexico Tort Claims Act (NMTCA). The prisoner had sustained injuries from work he was required to perform in a kitchen, and he made allegations about the injuries and his subsequent treatment. The state defendants moved to dismiss. The district court granted the motion. The court held that no New Mexico Department of Corrections (NMDOC) policy or regulation made any provision for the state prisoner's liberty interest in a labor assignment or otherwise provided the prisoner with protection from corrections officers ordering him to perform work in a prison kitchen or protection from orders in contravention of a medical order. The court ruled that the prisoner's § 1983 procedural due process claim arising from injuries he allegedly sustained while performing kitchen work was precluded. According to the court, corrections officers' alleged misclassification and denial of a grievance process did not rise to the degree of outrageousness, or the magnitude of potential or actual harm, that was truly conscience-shocking, precluding the state prisoner's § 1983 substantive due process claims. The court noted that the state prisoner made no allegation that he contracted any disease while working in the prison kitchen, but only that he suffered a shoulder injury as the result of a heavy-lifting component of his work, thus precluding his § 1983 unconstitutional conditions claim against the New Mexico Department of Corrections (NMDOC) and its secretary. The court held that the prisoner did not personally suffer any injury as a result of a corrections officer's classification of prisoners for work duty, purportedly assigning inmates with known transmissible diseases to kitchen work, precluding the prisoner's claim for an alleged violation of federal public health policy. (Aramark Corporation, Central New Mexico Correctional Facility)

U.S. Appeals Court
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
CELL ASSIGNMENT
LOWER BUNK

Robinson v. Catlett, 725 F.Supp.2d 1203 (S.D.Cal. 2010). A state inmate filed a § 1983 action against prison officials alleging constitutional violations and violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The officials moved for summary judgment. The district court granted the motion. The court held that the decision to assign the inmate to an upper bunk did not demonstrate deliberate indifference to his serious medical needs. The court noted that the inmate requested a vacant cell, rather than a lower bunk assignment, and officials assigned the inmate to a lower bunk once they understood problem. The court held the confiscation of the inmate's cane did not demonstrate deliberate indifference to his serious medical needs and did not violate the Rehabilitation Act. The cane was confiscated after the inmate attempted to strike another prisoner with it. The court found that prison officials' denial of the disabled inmate's request for his own cell did not amount to intentional discrimination on the basis of a disability, required to warrant the award of monetary damages under ADA or the Rehabilitation Act, even though officials had initially placed the inmate in an upper bunk. (Calipatria State Prison, California)

U.S. District Court
CELL ASSIGNMENT
DUE PROCESS
FAILURE TO PROTECT
MENTALLY ILL
SUICIDE

Silvera v. Connecticut Dept. of Corrections, 726 F.Supp.2d 183 (D.Conn. 2010). The representative of a pretrial detainee's estate filed a § 1983 action alleging that state prison officials' decision to house the detainee with a convicted inmate and their failure to provide adequate mental health care caused the detainee's suicide death. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that prison medical staff ignored abundant evidence demonstrating that the pretrial detainee was an acute suicide risk were sufficient to state a claim of deliberate indifference to his serious medical needs, in violation of the Due Process Clause. The court noted that evidence included a judge's instructions to keep him on suicide watch, the detainee's prior medical records, contemporaneous complaints and behavior, and examinations by medical staff, all of whom concluded that the detainee suffered from severe mental health issues. Nonetheless, officials placed him in a cell by himself, rather than in specialized housing, with access to materials with which he could hang himself, failed to check on him regularly, and ignored signs that his mental condition had deteriorated. The court found that a state prison supervisor was not liable under § 1983 for the pretrial detainee's suicide death, even if the supervisor had some training with regards to caring for mentally ill detainees, and his subordinates failed to properly oversee the detainee's activities. The court noted that the detainee was placed in the general prison population based on a mental health professional's recommendation, the supervisor was not aware that the detainee posed an excessive risk of suicide, and subordinates were given proper orders to keep the detainee under constant surveillance and interact with him at frequent, irregular intervals. The court described the change in the detainee's conditions of confinement prior to his suicide. "Inmates housed in the Charlie Unit—apparently unlike those in the specialized housing unit where Mr. Lyle was held from May 11 until May 15—have the ability to turn the cell's lights on and off at will. Additionally, the Charlie Unit has bunk-style beds, which are outfitted with standard-issue sheets and pillow case—both of which would play a role in Mr. Lyle's suicide. Once transferred to the Charlie Unit, Mr. Lyle was given standard DOC clothing, whereas previously he had been given only a 'suicide gown.'" According to the court, the pretrial detainee's right to due process was not violated merely because he was forced to share a cell with a convicted prisoner, absent an allegation that the detainee suffered an injury from being housed with a convicted inmate, or that placement with the convicted inmate was intended to punish the detainee. (Garner Corr'l Institute, Conn.)

2011

U.S. District Court
CLASSIFICATION
CRITERIA
DUE PROCESS
LIBERTY INTEREST
RECLASSIFICATION

Aref v. Holder, 774 F.Supp.2d 147 (D.D.C. 2011). A group of prisoners who were, or who had been, incarcerated in communication management units (CMU) at federal correctional institutions (FCI) designed to monitor high-risk prisoners filed suit against the United States Attorney General, the federal Bureau of Prisons (BOP), and BOP officials, alleging that CMU incarceration violated the First, Fifth, and Eighth Amendments. Four additional prisoners moved to intervene and the defendants moved to dismiss. The district court denied the motion to intervene, and granted the motion to dismiss in part and denied in part. The court held that even though a federal prisoner who had been convicted of solicitation of bank robbery was no longer housed in the federal prison's communication management unit (CMU), he had standing under Article III to pursue constitutional claims against the Bureau of Prisons (BOP) for alleged violations since there was a realistic threat that he might be redesignated to a CMU. The court noted that the prisoner had originally been placed in CMU because of the nature of his underlying conviction and because of his alleged efforts to radicalize other inmates, and these reasons for placing him in CMU remained. The court found that the restrictions a federal prison put on prisoners housed within a communication management unit (CMU), which included that all communications be conducted in English, that visits were monitored and subject to recording, that each prisoner received only eight visitation hours per month, and that prisoners' telephone calls were limited and subjected to monitoring, did not violate the prisoners' alleged First Amendment right to family integrity, since the restrictions were rationally related to a legitimate penological interest. The court noted that prisoners assigned to the unit typically had offenses related to international or domestic terrorism or had misused approved communication methods while incarcerated. The court found that prisoners confined to a communication management unit (CMU), stated a procedural due process claim against the Bureau of Prisons (BOP) by alleging that the requirements imposed on CMU prisoners were significantly different than those imposed on prisoners in the general population, and that there was a significant risk that procedures used by the BOP to review whether prisoners should initially be placed within CMU or should continue to be incarcerated there had resulted in erroneous deprivation of their liberty interests. The court noted that CMU prisoners were allowed only eight hours of non-contact visitation per month and two 15 minute telephone calls per week, while the general population at a prison was not subjected to a cap on visitation and had 300 minutes of telephone time per month. The court also noted that the administrative review of CMU status, conducted by officials in Washington, D.C., rather than at a unit itself, was allegedly so vague and generic as to render it illusory. (Communication Management Units at Federal Correctional Institutions in Terre Haute, Indiana and Marion, Illinois)

U.S. District Court
CUSTODY LEVEL
DUE PROCESS

Baggett v. Keller, 796 F.Supp.2d 718 (E.D.N.C. 2011). State prisoners, who were each convicted of first-degree murder and sentenced to life imprisonment, petitioned for federal habeas relief on the ground that their accrued good time, gain time, and merit time credits entitled them to unconditional release. The district court dismissed the petitions. The court held that the decision to withhold application of credits from the calculation of the date for unconditional release did not violate the prisoners' due process rights. The court noted that the credits were solely for the purpose of allowing prisoners serving life sentences to move to less restrictive custody grades, not for allowing unconditional release. The court held that the decision did not violate the Ex Post Facto Clause, where the DOC never promulgated a regulation under state law shortening or modifying prisoner's sentences and never applied sentence reduction credits toward calculating the date of their unconditional release. (North Carolina Department of Corrections)

U.S. District Court
GANGS
DUE PROCESS
EQUAL PROTECTION

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

U.S. Appeals Court
CLASSIFICATION
FAILURE TO PROTECT

Bishop v. Hackel, 636 F.3d 757 (6th Cir. 2011). A jail inmate brought a § 1983 claim against deputies, alleging that he suffered sexual abuse by another inmate as the result of their deliberate indifference to his safety needs in violation of the Eighth Amendment. The district court denied the deputies' motion for summary judgment and the deputies appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the deputies' alleged failure to protect the inmate from sexual assault by another inmate was objectively serious. The court held that the deputy who processed the inmate through booking when he entered the jail and completed a referral form that scheduled the inmate for a mental health assessment did not subjectively ignore any risk to the inmate's safety, and thus was not deliberately indifferent to the inmate's safety needs, noting that the deputy had no further contact with the inmate. The court also found that a deputy who ordinarily worked road patrol, and worked in the jail only on the day that the inmate reported that he had been sexually assaulted by another inmate, did not subjectively ignore any risk to the inmate's safety, and thus was not deliberately indifferent to the inmate's safety needs in violation of the Eighth Amendment, where the deputy did not have sufficient contact with the inmate to permit the deputy to perceive his asserted status as a vulnerable inmate, or to observe his alleged altercations with the other inmate. The court held that summary judgment was precluded by genuine issues of material fact as to whether one deputy, who was familiar with the inmate who reported the alleged sexual assault as well as the inmate who allegedly assaulted him, knew of the risk to inmate's safety because of his status as a vulnerable inmate and the other inmate's status as a predatory inmate, and as to whether the deputy knew of the risk to the inmate's safety based on noise generated by the alleged assaults. (Macomb County Jail, Michigan)

U.S. District Court
MENTALLY ILL
POLICY/PROCEDURE
PROTECTIVE CUSTODY
RECLASSIFICATION

Chess v. U.S., 836 F.Supp.2d 742 (N.D.Ill. 2011). An inmate who suffered personal injuries in an assault by a fellow inmate brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging it failed to properly screen the fellow inmate upon intake and also failed to monitor him. The inmate had suffered second-degree burns when the other inmate threw a cup of scalding water onto his face and then physically assaulted him by hitting him with the cup and punching him. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that the government failed to comply with certain directives aimed at monitoring federal prisoners suffering from mental illness, for the purposes of its attempt to avoid liability to the federal inmate who suffered personal injuries in an assault by a fellow inmate under the discretionary function exception to the Federal Tort Claims Act (FTCA) waiver of sovereign immunity. The court found that the inmate's claims relating to a corrections officer's alleged failure to monitor inmates during lockup were not barred by the Federal Tort Claims Act (FTCA) discretionary function exception. According to the court, while there was a genuine issue of material fact as to whether Bureau of Prisons (BOP) officials complied with requirements to review the inmate's central file upon intake and to review the assaulting inmate's mental health on a monthly basis, the assaulted inmate failed to raise the issue for trial as to whether the Bureau's failure to review the assaulting inmate's central file proximately caused his injury. The court found that summary judgment was precluded by a genuine issue of material fact, as to whether, after his second placement, BOP officials knew or reasonably should have known that the inmate should have been segregated from the administrative population. The court also found genuine issues of material fact as to whether a correctional officer's alleged failure to monitor the unit at the time of the attack constituted negligence and proximately caused the attacked inmate's injuries. (Federal Bureau of Prisons, Metropolitan Correctional Center Chicago, Illinois)

U.S. Appeals Court
FAILURE TO PROTECT
PRETRIAL DETAINEES
SEX OFFENDER

Holden v. Hirner, 663 F.3d 336 (8th Cir. 2011). A pretrial detainee filed a § 1983 action against officials of a county jail for allegedly violating his Fourteenth Amendment rights under the Due Process Clause by allegedly failing to protect him from an assault by three other inmates, and failing to provide adequate medical treatment for his tooth pain. The district court granted prison officials summary judgment and the detainee appealed. The appeals court affirmed. The court held that there was no evidence that the pretrial detainee was incarcerated

under conditions posing a substantial risk of serious harm in the protective custody pod in which the detainee was imprisoned as a sex offender, even though one of the assaulting inmates was involved in another fight four days before the altercation with the detainee. The court noted that the pod was designed to provide greater supervision and security for vulnerable inmates who were more likely to be assaulted, and nothing in the record established that the prior fight involved a sex offender. According to the court, even if the pretrial detainee faced a substantial risk of serious harm from other inmates in the protective custody pod, there was no evidence that officials at the county jail were deliberately indifferent to his safety, where the detainee did not tell officials that he felt threatened by other inmates, and the officials had no knowledge of any specific danger to the detainee in the pod. (Marion County Jail, Missouri)

U.S. Appeals Court
CUSTODY LEVEL
EQUAL PROTECTION

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

U.S. Appeals Court
CELL ASSIGNMENT
DOUBLE CELLING

Murray v. Bledsoe, 650 F.3d 246 (3rd Cir. 2011). An inmate brought a pro se petition for judicial review of a decision of the Federal Bureau of Prisons (BOP) rejecting his claim that he had a right to choose his cellmate. The district court denied relief, and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate had no Ninth Amendment right to choose his cellmate. (Special Management Unit, United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
DUE PROCESS
ISOLATION
JUVENILES
LIBERTY INTEREST
TRANSFER

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 (JJJ), 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. Both delinquents were allegedly denied mental health treatment during their periods in isolation. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the New Jersey Juvenile Justice Commission (JJJ) and mental health providers were deliberately indifferent towards conditions of confinement, in protecting and in providing medical care for the juvenile delinquent housed in JJJ 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 (JJJ) 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 (JJJ) 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 OF
SEGREGATION
POLICY/PROCEDURE
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. Appeals Court
LOWER BUNK
CELL ASSIGNMENT
SPECIAL NEEDS

Akhtar v. Mesa, 698 F.3d 1202 (9th Cir. 2012). A state prisoner brought a § 1983 action against correctional officers, alleging deliberate indifference to his serious medical needs in connection with the officers' alleged failure to comply with the prisoner's medical orders, which required the prisoner to be housed in a ground floor cell. The district court dismissed the action and denied the prisoner's motion to alter or amend the judgment. The prisoner appealed. The appeals court affirmed and remanded. The court held that the district court abused its discretion by failing to consider arguments that directed the court to crucial facts showing he might have exhausted his administrative remedies, and in addition to being pro se, the prisoner was illiterate, disabled, and

had limited English skills. The court found that the prisoner satisfied the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) prior to filing his § 1983 action against the correctional officers, where the prisoner filed grievances addressing the officers' alleged failure to comply with medical orders several months before filing the complaint. The court held that the prisoner stated a § 1983 Eighth Amendment claim against correctional officers for deliberate indifference to his serious medical needs. The prisoner alleged that he suffered from numerous medical conditions and was hearing and mobility impaired, that his medical orders stated that the prisoner was mobility impaired and had housing restrictions requiring a lower bunk, no stairs, and no triple bunk, and that the correctional officers knew of those medical orders, but failed to comply with them. (Mule Creek State Prison, California)

U.S. District Court
DISCIPLINE
LIBERTY INTEREST

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
MENTALLY ILL
SUICIDE
SEGREGATION

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
CELL ASSIGNMENT
FAILURE TO PROTECT
GANGS
POLICY/PROCEDURE

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

U.S. District Court
CLASSIFICATION
CRITERIA
POLICY/PROCEDURE
PRETRIAL DETAINEES
SUICIDE

Ferencz v. Medlock, 905 F.Supp.2d 656 (W.D.Pa. 2012). A mother, as administrator for her son's estate, brought deliberate indifference claims under a wrongful death statute against prison employees, and the prison's medical services provider, following the death of her son when he was a pretrial detainee in a county prison. The employees and provider moved to dismiss. The district court granted the motion in part and denied in part. The district court held that under Pennsylvania law, the mother lacked standing to bring wrongful death and survival actions in her individual capacity against several prison employees for her son's death while he was in prison, where the wrongful death and survival statutes only permitted recovery by a personal representative, such as a mother in her action as administratrix of her son's estate, or as a person entitled to recover damages as a trustee ad litem. The court found that the mother's claims that a prison's medical services provider had a policy, practice, or custom that resulted in her son's death were sufficient to overcome the provider's motion to dismiss the mother's § 1983 action for the death of her son while he was in prison. Upon admission to the facility, the detainee had been evaluated and scored a 12 on a scale, which was to have triggered classification as suicidal (a score of 8 or more). The Classification Committee subsequently did not classify the detainee as suicidal as they were required to do under the jail classification policy, and no member of the Committee communicated to medical contractor staff or correctional officers responsible for monitoring the detainee that he was suicidal and going through drug withdrawal. (Fayette County Prison, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. District Court
FAILURE TO PROTECT
SUICIDE
DUE PROCESS

Glover v. Gartman, 899 F.Supp.2d 1115 (D.N.M. 2012). The personal representative of the estate of a pretrial detainee who committed suicide while in custody brought an action against a warden of a county detention center and corrections officers, alleging under § 1983 that the defendants violated his substantive due process rights when they provided him with razor blades and failed to respond in a timely manner to his emergency calls for help. The officers moved to dismiss for failure to state a claim. The district court granted the motion. The

court held that a county corrections officer's act of providing the pretrial detainee with two razor blades and then leaving the detainee alone for over an hour so that detainee could shave before trial, during which time the detainee committed suicide, did not violate the detainee's substantive due process rights under the United States Constitution or the New Mexico Constitution, where the officer did not know that the detainee posed any suicide risk. The court also held that the officer was entitled to qualified immunity from the § 1983 claim that the officer violated the pretrial detainee's substantive due process rights, where there was no due process violation, as the officer did not know that the detainee posed any suicide risk, and a detainee's substantive due process right not to be left alone with razor blades was not clearly established at the time of the incident. The court also found that a corrections officer was entitled to qualified immunity from the § 1983 claim that the officer violated the substantive due process rights of the detainee by failing to respond to the detainee's calls for help. According to the court, the officer's conduct did not rise to the level of a due process violation, and the substantive due process right of the detainee to have an officer respond to a call was not clearly established absent evidence that the officer heard the call or knew of a suicide risk. (Lea County Detention Center, New Mexico)

U.S. District Court
AIDS- Acquired Immune
Deficiency Syndrome
CLASSIFICATION
CRITERIA
MEDICAL CARE
POLICY/PROCEDURE
SEGREGATION
TRANSFER
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
RECLASSIFICATION
TRANSFER

King v. Zamara, 680 F.3d 686 (6th Cir. 2012). A state prisoner sued several corrections employees under § 1983 for violating his First Amendment rights when they transferred him to an increased security level facility in retaliation for his participation in a state-court class action against corrections officials regarding inmate property, as well as for his assistance to other inmates in filing grievances. The district court entered 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 a causal connection existed between the adverse action in increasing the prisoner's security level and the prisoner's purportedly disruptive First Amendment protected conduct, and that certain officials failed to show by a preponderance of the evidence that they would have taken the same action absent the protected conduct. The court found that a deputy warden could be held liable on the prisoner's § 1983 First Amendment retaliation claim, where her memo complaining about the prisoner's behavior was the actual and proximate cause of the increase in the prisoner's security level, and where she helped execute the order increasing the prisoner's security level with the knowledge that it was intended to retaliate for the prisoner's protected conduct. According to the court, the transfer coordinator was not liable on the prisoner's § 1983 First Amendment retaliation claim based on his editing of the prisoner's security screen to replace the initial notation with the notation that the prisoner was manipulative, where there was no showing that he knew or should have known that his superior's order to do so was meant to retaliate for the prisoner's protected conduct a month earlier. The court held that an assistant deputy warden was not liable on the prisoner's § 1983 First Amendment retaliation claim based on his signing a backdated security screen approving the prisoner's transfer to the increased security facility, where he neither knew or should have known that he was implementing punishment for the prisoner's exercise of his protected rights. (Michigan Department of Corrections, Brooks Correctional Facility, Chippewa Correctional Facility)

U.S. Appeals Court
CIVIL COMMITMENT
SEX OFFENDER
TREATMENT
DUE PROCESS

Lane v. Williams, 689 F.3d 879 (7th Cir. 2012). Convicted sex offenders who, after completing their sentences, remained in state custody as civil detainees pursuant to the Illinois Sexually Violent Persons Commitment Act, brought a § 1983 action, alleging constitutional problems with the conditions of their confinement at a treatment facility. The district court granted summary judgment to the defendants and the detainees appealed. The appeals court affirmed. The appeals court held that security restrictions on face-to-face interactions between the civil detainees held in different units within the state's treatment facility for sexually violent persons (SVP) did not constitute treatment decisions which, as a matter of due process, had to be made by health professionals, merely because the security restrictions affected treatment options. The court found that requiring the civil detainees to

use United States Mail, rather than the facility's internal mail system, to send letters to detainees in the facility's other units did not violate the detainees' First Amendment associational rights, even if the facility's internal mail system was a superior means of sending letters. The court noted that commitment under the Illinois Sexually Violent Persons Commitment Act is civil and may be for purposes such as incapacitation and treatment, but not for punishment. As a general matter, persons who have been involuntarily civilly committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish. (Rushville Treatment and Detention Center, Illinois)

U.S. District Court
MENTALLY ILL
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 court ruled that the state inmate failed to establish the likelihood of success on the merits of his claim and thus was not entitled to a preliminary injunction ordering his transfer, despite the inmate's contention that he was mentally unstable and had repeatedly caused himself physical injury during his suicide attempts, where medical records the inmate submitted were ten years old, and a state supreme court recognized that prison officials had discretion to house inmates at facilities they chose. The court ordered the appointment of counsel, noting that the inmate was unable to afford legal representation, he had a history of mental health problems, and the matter presented complex legal issues. (James T. Vaughn Corr'l. Center, Smyrna, Delaware)

U.S. District Court
CELL ASSIGNMENT
PRETRIAL DETAINEE
SEPARATION

Solivan v. Dart, 897 F.Supp.2d 694 (N.D.Ill. 2012). A pretrial detainee brought a § 1983 action against a county, corrections officers, and a sheriff, alleging deliberate indifference to undue punishment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee's § 1983 complaint stated a claim against a correctional officer for deliberate indifference to a serious need in violation of the Fourteenth Amendment, where the complaint alleged facts that indicated that the officer left inmates visually and audibly unsupervised for hours, knowing that a substantial risk of harm was present. The complaint further alleged that there were no light bulbs in the detainee's cell, no intercoms or emergency call buttons in cells, and no overhead cameras on his tier of the jail. According to the court, the complaint stated that the harm the detainee suffered at the hands of other inmates was significant, including severe injuries to his right eye and bleeding from his ear, and the complaint alleged that the detainee was the only person of Hispanic origin housed in the maximum security tier, while a significant majority of other inmates were African American, and that these circumstances put the detainee in an identifiable group of prisoners who were singled out for attack. (Division One, Cook County Department of Corrections, Illinois)

U.S. District Court
LENGTH OF
SEGREGATION
TRANSFER

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

U.S. District Court
CUSTODY LEVEL
POLICY/PROCEDURE
RECLASSIFICATION
TRANSFER

U.S. v. Jones, 869 F.Supp.2d 373 (E.D.N.Y. 2012). After a defendant, convicted of racketeering and racketeering conspiracy, conspiracy to distribute marijuana, use of a firearm in furtherance of the distribution conspiracy, and four instances of small-scale marijuana distribution, but found not guilty of charges relating to a murder, was sentenced, he filed a motion challenging the decision of the federal Bureau of Prisons (BOP) to classify his security level as "high" and designate him for incarceration at a high-security facility. The district court held that the remedy for the inmate's alleged misclassification lay primarily with the BOP. The court noted that the classification and designation of inmates is a matter within BOP's sole discretion. According to the court, although a district court has habeas jurisdiction to address the execution of a sentence, it does not have jurisdiction over a habeas petition challenging the petitioner's classification by the Bureau of Prisons. (United States Penitentiary, Big Sandy, Kentucky)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
POLICY/PROCEDURE
RACIAL
DISCRIMINATION

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 held that the allegations stated a claim under Title VI for disparate impact discrimination, stated a claim for retaliation in violation of the First Amendment, and that the

allegations satisfied the requirements for pleading the municipal liability of the county. According to the court, allegations by the United States, that officers from the county sheriff's office routinely and unlawfully targeted Latinos through pretextual traffic stops, crime suppression sweeps, and worksite raids, and that as a result Latinos were far more likely to be deprived of their constitutional rights than non-Latinos, stated a claim for disparate impact discrimination under Title VI by programs or activities receiving federal financial assistance. 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
AIDS- Acquired Immune
Deficiency Syndrome
CUSTODY LEVEL
HOMOSEXUALS

Way v. Johnson, 893 F.Supp.2d 15 (D.D.C. 2012). A District of Columbia inmate brought an action against wardens, an investigator, federal agencies, and other officials, alleging failure to investigate, and that his removal from a drug treatment program was discrimination based on his homosexuality and HIV-positive status. The district court granted the defendants' motion to dismiss. The court held that the inmate failed to exhaust administrative remedies in either of the two prisons in which he was housed as to removal from the drug treatment program or a change of housing, as required by the Prison Litigation Reform Act (PLRA), where the inmate did not file any grievance in the first prison, and only filed an informal grievance form at the second prison. The court noted that the inmate did not appeal upon the response from the warden at the second prison. (United States Parole Commission, Secure Residential Treatment Program, Court Services and Offender Supervision Agency for the District of Columbia)

U.S. Appeals Court
DUE PROCESS
POLICY/PROCEDURE
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)

2013

U.S. District Court
PRETRIAL DETAINEES
SEGREGATION

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
CELL ASSIGNMENT
FAILURE TO PROTECT
SEPARATION

Alsobrook v. Alvarado, 986 F.Supp.2d 1312 (S.D.Fla. 2013). A state prisoner who was seriously injured in a fight with his cellmate brought a § 1983 action against a warden, corrections officers, prison nurse, the prison's healthcare provider, and the Secretary of the Florida Department of Corrections. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the prisoner sufficiently alleged that a corrections officer was deliberately indifferent to a risk of serious harm posed by the cellmate, in violation of the Eighth Amendment, where: (1) the prisoner alleged that his cellmate told the officer that he would become violent if the prisoner was not removed from the cell; (2) the prisoner requested to be separated from his cellmate; (3) the officer did nothing in response to this information; and (4) that a fight ensued, which resulted in serious injuries to the prisoner. (South Florida Reception Center, Florida)

U.S. Appeals Court
DUE PROCESS
EQUAL PROTECTION
MEDICAL CARE
MENTALLY ILL
SUICIDE

Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013). The administrator of the estate of a female federal detainee who committed suicide in a county jail filed suit against the county, county jail officials, and employees of the medical provider that had a contract with the county to provide medical services at the jail, alleging violation of the detainee's due process rights and Illinois tort claims. The district court granted summary judgment in favor of all county defendants. The administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the jail inmate who was detained by federal immigration authorities pending her removal hearing was in the same position as a lawfully arrested pretrial detainee. The court noted that a pretrial detainee was entitled, pursuant to the due process clause, to at least as much protection during her detention as convicted criminals were entitled to under the Eighth Amendment-- namely protection from harm caused by a defendant's deliberate indifference to the inmate's safety or health. The court asserted that persons who have been involuntarily committed are entitled, under the due process clause, to more considerate treatment during detention than criminals whose conditions of confinement are designed to punish. The court found that the alleged conduct of a clinical social worker at the county jail who interviewed the detainee, in noting that the detainee suffered from a major depressive disorder, hallucinations, acute anxiety, and feelings of hopelessness, but allegedly failing to report those findings to the jail guards or any other jail staff or to recommend that the detainee be placed on a suicide watch or receive mental health treatment, amounted to deliberate indifference to the detainee's risk of suicide, in violation of the detainee's due process rights. The court held that a nurse manager employed by the medical provider was not deliberately indifferent to the detainee's risk of suicide, as would violate the detainee's due process rights, where the nurse manager treated the detainee for panic attacks and anxiety, and recommended that she be given a cellmate and transferred to a medical treatment area at the jail, both of which were done, and there was no showing that the nurse manager knew that the detainee was suicidal. According to the court, the county sheriff's and county jail director's failure to provide annual training to jail staff on how to recognize the risk of suicide in detainees, and their failure to implement a suicide prevention policy, did not render the county liable under § 1983 for the detainee's suicide during her detention at the jail, absent a showing that such failures caused the detainee's suicide. (McHenry Co. Jail, Ill.)

U.S. District Court
CUSTODY LEVEL
RECLASSIFICATION

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
CELL ASSIGNMENT
DOUBLE CELLING

Brown v. Massachusetts, 950 F.Supp.2d 274 (D.Mass. 2013). An inmate brought an action under § 1983 for deliberate indifference to his health, against corrections facility officers and a superintendent. The officers and superintendent moved to dismiss. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate's complaints about another inmate who had violent tendencies being placed in his cell, and corrections officers' refusal to move him, were able to be grieved within the meaning of the provision of the Prison Litigation Reform Act (PLRA) that required the exhaustion of administrative remedies for grievable complaints. According to the court, summary judgment was also precluded by a genuine issue of material fact as to whether the corrections officers were aware they exposed the inmate to a serious risk of harm by placing another inmate who had violent tendencies in his cell, and by refusing to separate the two after the first inmate explained to the officers that he feared for his safety. Summary judgment was also precluded due to fact issues as to whether the inmate's complaint to the corrections officers that he did not feel safe with another inmate who had been placed in his cell, would trigger the inmate's clearly established right to be free from violence at the hands of other prisoners. (Essex County Corrections Facility, Massachusetts)

U.S. Appeals Court
GANGS
CLASSIFICATION
CRITERIA
DUE PROCESS
REGULATIONS

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

U.S. District Court
CELL ASSIGNMENTS
PRETRIAL DETAINEES

Davis v. Pickell, 939 F.Supp.2d 771 (E.D.Mich. 2013). A pretrial detainee brought a § 1983 action against a sheriff, undersheriff, and deputies, alleging various claims, including excessive force. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The detainee had been booked into a holding cell at the jail and then he was removed from the multi-prisoner cell and taken to a single-inmate "safety cell." He alleges that during the transfer, deputy sheriffs subjected him to excessive force in the course of removing his jacket and shoes. The district court found that "[T]he videotape provides substance to those allegations." The court held that summary judgment was precluded by genuine issues of material fact as to whether the deputies' use of force against the detainee shocked the conscience, whether the deputies maliciously

used force, and whether the use of force on the detainee was outrageous conduct. (Genesee County Jail, Michigan)

U.S. District Court
FAILURE TO PROTECT
GANGS
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. District Court
FAILURE TO PROTECT
HARASSMENT
HOMOSEXUALS
EQUAL PROTECTION
SEPARATION

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
CIVIL COMMITMENT
SEGREGATION
DUE PROCESS

Grohs v. Yatauro, 984 F.Supp.2d 273 (D.N.J. 2013). A civilly-committed resident at a special treatment unit (STU) operated by the New Jersey Department of Corrections (NJDOC) brought action against NJDOC officials, alleging violations of his substantive due process rights under § 1983. The district court held that the resident's claims against the officials in their official capacities were barred by sovereign immunity. The court held that the resident's allegations adequately pled the officials' personal involvement in his complaint that: (1) there were visibly leaking steam pipes in a special treatment unit (STU) for which trash cans were used to collect water; (2) NJDOC officials personally toured STU; (3) STU received numerous written complaints from residents about inadequate hot water; and (4) an STU assistant administrator told the resident that defective piping valves were too expensive to repair. The court found that the officials were subject to liability under § 1983 in their individual capacities. The court held that NJDOC officials were not entitled to qualified immunity from the civilly committed resident's § 1983 conditions of civil commitment claim under the Due Process Clause, arising from inadequate hot water at a special treatment unit (STU) in which he was housed. (Special Treatment Unit, Avenel, Middlesex County, New Jersey)

U.S. Appeals Court
PUNITIVE
SEGREGATION
DUE PROCESS
LIBERTY INTEREST
SEGREGATION

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
DUE PROCESS
EQUAL PROTECTION
POLICY/PROCEDURE
RACIAL
DISCRIMINATION

Hernandez v. Cate, 918 F.Supp.2d 987 (C.D.Cal. 2013). An Hispanic state inmate, whose ethnicity was classified as "other," brought an in forma pauperis civil rights action against California Department of Corrections and Rehabilitation (CDCR) officials, alleging, among other things, that the officials discriminated against him on basis of his race, in violation of his equal protection and due process rights, and that the officials violated his Eighth Amendment right to be free from cruel and unusual punishment. The officials moved to dismiss the complaint for failure to state claim. The district court granted the motion in part and denied in part. The court held that state prison officials applied a suspect racial classification to Hispanic inmates, who were ethnically classified as "other," when the officials placed those inmates on modified program status in lockstep with the lockdown of Mexican inmates, while non-Hispanic inmates who associated with the Mexican inmates or disruptive inmates of other ethnic groups were not subjected to same lockstep treatment. According to the court, prison policies were not narrowly tailored to control prison disturbances, as required to survive strict scrutiny of the § 1983 equal protection claim brought by Hispanic inmate. The court held that the state prison warden's authority and discretion to justify modified programs imposed on the Hispanic inmate and to deny the inmate relief at the administrative level were sufficient to show the warden's personal involvement in the alleged

deprivations of the inmate's equal protection and Eighth Amendment rights so as to subject the warden to supervisory liability under § 1983. The court found that state prison officials were not entitled to qualified immunity from the § 1983 equal protection claim brought by the Hispanic inmate where it would have been clear to a reasonable official that it was unlawful to place the inmate on a modified program on the basis of his race, ethnicity, or national origin. (Ironwood State Prison, California Department of Corrections and Rehabilitation)

U.S. District Court
CELL ASSIGNMENT
MEDICAL CARE
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
DUE PROCESS
MEDICAL CARE
PRETRIAL DETAINEES

Nelson v. District of Columbia, 928 F.Supp.2d 210 (D.D.C. 2013). A detainee brought a § 1983 claim against the District of Columbia arising from his stay in jail. The defendant moved to dismiss and the district court granted the motion. The court held that denial of one telephone call and access to stationery during the detainee's five-day stay in a "Safe Cell," which was located in the jail's infirmary, did not implicate his First Amendment right of free speech or right of access to courts. The court found that the detainee's alleged exposure to "dried urine on the toilet seat and floor" and garbage during his five-day stay, along with the denial of a shower, did not rise to the level of a Fifth Amendment due process violation. According to the court, placement of detainee in a Safe Cell was not motivated by a desire to punish the detainee, but rather by a nurse's desire to attend to the detainee's ailments after his "legs and back gave out" twice. The court noted that denial of the detainee's request to have the cell cleaned was for the non-punitive reason that the detainee would not be in the cell that long. (D.C. Jail, District of Columbia)

U.S. District Court
SEGREGATION
PRETRIAL DETAINEES
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. (Cook County Jail, Illinois)

U.S. District Court
CELL ASSIGNMENT
CLASSIFICATION
EQUAL PROTECTION
FAILURE TO PROTECT
MEDICAL CARE
MENTALLY ILL
RACIAL
DISCRIMINATION
WORK

Randle v. Alexander, 960 F.Supp.2d 457 (S.D.N.Y. 2013). An African-American state inmate with a history of serious mental illness brought an action against officials of the New York State Department of Corrections and Community Supervision (DOCCS), correctional officers, and mental health personnel, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs and that he was retaliated against, in violation of his First Amendment rights, among other claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the correctional officers' alleged actions in forcing the inmate to fight a fellow inmate, and threatening to beat the inmate with a baton and engage in a joint cover-up if the two inmates did not "finish" their fight within a specified area of the prison, which ultimately resulted in the fellow inmate sustaining fatal injuries in the fight, had no legitimate penological purpose, and was far afield of the species of force employed to restore or maintain discipline. The court held that the alleged actions reflected indifference to inmate safety, if not malice toward the inmate, as supported the inmate's § 1983 Eighth Amendment failure to protect claim. According to the court, the alleged forced fight between the inmate and a fellow inmate, orchestrated, condoned, and covered up by correctional officers was an objectively serious violation of the inmate's Eighth Amendment right to reasonably safe conditions of confinement, and the intent evinced by such activity was, at the very least, one of indifference to inmate safety, supporting the inmate's § 1983 Eighth Amendment conditions of confinement claim against the officers.

The court held that the African-American state inmate's allegations in his complaint that a correctional officer arranged inmates in his company so that white inmates were close to officers' posts, whereas black inmates were placed further away, that white inmates were given superior jobs, that the officer's efforts in forcing a fight

between the inmate and a fellow inmate were done purposefully for his amusement because both inmates were black, and that the officer's treatment of the inmate and other black inmates was motivated by his intent to discriminate on the basis of race and malicious intent to injure inmates, stated a § 1983 equal protection claim against the officer. The court ruled that the correctional officers were not entitled to qualified immunity from the inmate's § 1983 Eighth and Fourteenth Amendment claims because inmates had a clearly established right to remain incarcerated in reasonably safe conditions, and it was objectively unreasonable to threaten inmates until they agreed to fight each other in front of prison officials. The court found that the inmate stated an Eighth Amendment inadequate medical care claim against mental health personnel. The inmate alleged that he had a history of serious mental illness, that his symptoms increased following a forced fight with a fellow inmate, that the inmate attempted suicide on three occasions, two of which required his hospitalization, that prison mental health personnel evidenced deliberate indifference to his medical needs, as they recklessly disregarded the risk the inmate faced as result of special housing unit (SHU) confinement, and that the inmate was confined to SHU despite a recommendation that he be placed in a less-restrictive location. (Green Haven Correctional Facility, Protective Custody Unit, New York State Department of Corrections)

U.S. District Court
CELL ASSIGNMENT
FAILURE TO PROTECT
LOWER BUNK
MEDICAL CARE

Robinson v. Phelps, 946 F.Supp.2d 354 (D.Del. 2013). A state prisoner brought a § 1983 action against prison officials alleging excessive force and failure to protect. The district court held that the prisoner stated cognizable and non-frivolous claims for excessive force, failure to protect, and denial of medical care. The prisoner alleged that on one occasion a sergeant assaulted him and that a lieutenant arrived during the assault and that he sustained injuries but was denied medical care by these officers and other prison personnel, that another sergeant shoved and pushed him when he was taken to a medical grievance hearing, making his injuries worse, that this sergeant shoved him to the ground while escorting him to the shower, and then dragged him when he could not get up, requiring that he be taken away by stretcher, and that other officers later choked him until he lost consciousness. The court found that the prisoner also stated cognizable and non-frivolous Eighth Amendment claims against a prison physician for denial or delay of medical treatment; the prisoner alleged that after he was assaulted by a corrections officer, he was seen by the physician, who would not prescribe pain medication and advised the prisoner that he would be x-rayed within seven to ten days, but the x-rays were not taken for a month and a half, and he alleged that some months later he was taken to an outside facility for a magnetic resonance imaging (MRI) of the neck and back. According to the court, the prisoner's allegations were sufficient to state an Eighth Amendment claim that the physicians denied his requests for medically necessary accommodations. The prisoner alleged that medical officials did not authorize his housing on a lower bunk and, as a result, he slept on the floor, that an officer later moved him to an upstairs cell even though he knew that the prisoner required lower housing due to his neck and back injuries, and that the prisoner showed the officer a memo from a superior officer indicating the prisoner needed the housing, (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
DUE PROCESS
POLICY/PROCEDURE
SEGREGATION

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
LENGTH OF
SEGREGATION
DUE PROCESS

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
TRANSSEXUAL
FAILURE TO PROTECT

Shaw v. District of Columbia, 944 F.Supp.2d 43 (D.D.C. 2013). A former pretrial detainee, a transgender woman, who underwent sex reassignment surgery and had her sex legally changed to female, brought an action against the United States Marshals Service (USMS), USMS marshals, District of Columbia, a police chief, and police officers, alleging under § 1983 that the defendants violated her Fourth Amendment rights in connection with her arrests, and asserting claims under the District of Columbia Human Rights Act and tort law. The police chief, officer, and USMS defendants moved to dismiss. The district court granted the motion in part and denied in part. The district court held that the USMS marshals were not entitled to qualified immunity from the unlawful search claim, where a reasonable officer would have known that a cross-gender search of a female detainee by male USMS employees that included intimate physical contact, exposure of private body parts, and verbal harassment, all in front of male detainees and male USMS employees, in the absence of an emergency, was unreasonable. The court also found that the USMS marshals and the police officer were not entitled to qualified immunity from a § 1983 Fifth Amendment conditions of confinement claim brought by the pretrial detainee, arising from the defendants' actions in holding the detainee with male detainees and otherwise treating her as if she were male. According to the court, a reasonable officer would know that treating the female detainee as the detainee was treated exposed her to a substantial risk of serious harm, and, therefore, would know that those actions violated the detainee's due process rights. (District of Columbia Metropolitan Police Department, Sixth District Police Station and MPD's Central Cellblock, and United States Marshals Service)

U.S. Appeals Court
CLASSIFICATION
CRITERIA
SEPARATION
DUE PROCESS
REGULATIONS

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

U.S. Appeals Court
CELL ASSIGNMENT
TRUSTY
WORK

Spencer v. Jackson County, Mo., 738 F.3d 907 (8th Cir. 2013). An inmate brought a § 1983 action against county detention center employees, alleging violation of his First Amendment rights. The district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by issues of material fact as to: (1) the inmate's First Amendment retaliation claim against a supervisor; (2) First Amendment retaliation claims arising from the inmate's transfer to another housing module; and (3) claims arising from the alleged obstruction of the inmate's access to a grievance process. The court found a dispute of material fact as to whether a program supervisor was motivated by the lawsuit the inmate had previously filed against her, when she removed the inmate from a trustee program almost immediately after he reminded her about his having filed the suit, resulting in his loss of access to income, work opportunities, and housing advantages as well as other privileges.

A fact issue was found as to whether the 53-year old inmate would have been transferred from a housing module for older inmates to a module that housed younger and more violent offenders, but for his use of the grievance process. The inmate had been approved for the detention center's Inmate Worker Program (IWP), also known as the "trustee program." Inmates in the trustee program received job assignments within the detention center and were paid for each shift, with an opportunity to earn more for additional work. They also received a number of privileges and incentives. They were housed in a trustee module and were eligible for late nights, weekend contact visitation rewards, and access to popcorn, soda, and a movie player. One of inmate's work assignments was in the kitchen, where inmates received extra food and may have one meal per work day in the break room area. (Jackson County Detention Center, Missouri)

U.S. District Court
LOWER BUNK
MEDICAL CARE

Staples v. U.S., 948 F.Supp.2d 1 (D.D.C.2013). A federal prisoner brought a pro se action against the United States and several employees of the Bureau of Prisons, alleging violations of the Eighth Amendment. The district court held that the inmate stated Eighth Amendment violations with his allegations that: (1) two corrections officers at the federal prison ignored the his medical restriction, which required him to sleep on a lower bunk bed; (2) the officers told the prisoner to sleep on a top bed or to sleep on the floor; (3) he was forced to sleep on the floor and suffered unnecessary physical pain in his back and left hip; and (4) his condition was ignored. The

prisoner alleged that the conditions continued for over two weeks in spite of his complaints. (Federal Correctional Institution Schuylkill, Minersville, Pennsylvania)

U.S. District Court
CLASSIFICATION
EQUAL PROTECTION
LENGTH OF
SEGREGATION
LIBERTY INTEREST
SEGREGATION
SEX OFFENDERS

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. Appeals Court
LOWER BUNK
MEDICAL CARE

Withers v. Wexford Health Sources, Inc., 710 F.3d 688 (7th Cir. 2013). A prisoner brought a § 1983 action against a variety of health professionals employed by or under contract to a state prison, alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court granted the defendants' motion for summary judgment and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that a genuine issue of material fact existed as to whether a nurse who allegedly let the prisoner who was suffering from back pain to climb a ladderless bunk bed, resulting in his fall from the bunk bed, was deliberately indifferent to the prisoner's medical needs, precluding summary judgment. (Danville Correctional Center, Illinois)

2014

U.S. District Court
HANDICAPPED INMATE

Blossom v. Dart, 64 F.Supp.3d 1158 (N.D.Ill. 2014). A disabled detainee in a county jail brought an action against a county and a county sheriff, asserting a § 1983 claim for deprivation of his Fourteenth Amendment rights and alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The sheriff filed a motion to dismiss for failure to state a claim. The district court denied the motion. The court held that the disabled detainee, who suffered injuries due to the lack of accommodation for his disability, sufficiently alleged that the sheriff had personal knowledge of, or involvement in, the alleged deprivation of his Fourteenth Amendment rights, so as to state a § 1983 claim against the sheriff in his individual capacity. The detainee alleged that the sheriff acquired personal knowledge of the fact that disabled prisoners assigned to a certain jail division had sustained injuries because shower and toilet facilities were not equipped with appropriate grab bars, toilet seats, and shower seats, and the detainee alleged that despite revising the jail's housing assignment policy for detainees who used wheelchairs, the sheriff refused to revise the policy for other disabled detainees. The court also found that the detainee sufficiently alleged that there was an official policy allowing disabled detainees to be housed in non-accessible housing units that continued to exist despite the knowledge that the policy had caused serious injuries to disabled detainees. (Cook County Jail, Illinois)

U.S. Appeals Court
SEGREGATION
SOLITARY
CONFINEMENT
DUE PROCESS
REVIEW
PRIVILEGES

Brown v. Oregon Dept. of Corrections, 751 F.3d 983 (9th Cir. 2014). A state prison inmate brought a pro se § 1983 action against the Oregon Department of Corrections alleging that prison officials violated his due process rights by housing him in an intensive management unit without periodic, meaningful review of his status. The defendants moved for summary judgment. The district court granted the motion. The inmate appealed. The appeals court affirmed. The court held that the inmate's 27-month confinement in an intensive management unit deprived him of a due-process protected liberty interest, but the inmate's due-process protected liberty interest in periodic, meaningful review of his status was not clearly established, and thus prison officials were entitled to qualified immunity. The court noted that the inmate experienced an atypical and significant hardship in that he was subjected to solitary confinement for over 23 hours each day, with almost no interpersonal contact, and he was denied most privileges afforded to inmates in the general population. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
CELL ASSIGNMENT

Caldwell v. Warden, FCI Talladega, 748 F.3d 1090 (11th Cir. 2014). A federal prisoner who was assaulted and stabbed by his cellmate filed a pro se Bivens action against federal corrections officers, alleging deliberate indifference to a substantial risk of serious harm. The district court granted summary judgment in favor of the officers. The prisoner appealed, and counsel was appointed to represent prisoner. The appeals court vacated and remanded, finding that fact issues precluded summary judgment, and that the officers were not entitled to

qualified immunity. The court found a genuine issue of material fact as to whether the federal prison officers had actual subjective knowledge that the federal prisoner faced a substantial risk of serious harm from the cellmate, who had a known history of violence, before the officers placed the prisoner in the cell with the cellmate, where he was assaulted and stabbed. The court noted that they had a known history of violence and had already threatened the prisoner's safety by setting their locked cell on fire. (FCI–Talladega, Alabama)

U.S. District Court
FAILURE TO PROTECT
HANDICAPPED INMATE
MENTALLY ILL

Cox v. Massachusetts Dept. of Correction, 18 F.Supp.3d 38 (D.Mass. 2014). A mentally disabled state prisoner brought an action against a state department of correction (DOC) and various officials, alleging violations of the Eighth and Fourteenth Amendments, Americans with Disabilities Act (ADA), and Massachusetts Declaration of Rights. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the prisoner's grievance alleging he was improperly classified, resulting in a sexual assault, provided the DOC with sufficient notice to investigate, and therefore, the prisoner's claims under the Americans with Disabilities Act (ADA) were administratively exhausted. The prisoner alleged that the DOC did not keep him safe and that he was mentally challenged. According to the court, the prisoner's allegations that he was sexually assaulted by other inmates, that he suffered other abuses, that prison officials knew of the risk of harm to the prisoner, that his history of mental illness was well-documented, and that officials were responsible for policies, procedures, and training that led to his injury were sufficient to state a § 1983 claim against the officials for violations of the Eighth Amendment, and a claim under the Massachusetts Civil Rights Act, absent allegations of threats, intimidation, or coercion by officials. The court held that the prisoner's allegations that prison officials knew of his disability, that medical professionals encouraged staff to provide appropriate housing to prevent the prisoner from being targeted by other inmates, and that he was sexually assaulted after failure to provide appropriate housing were sufficient to state a failure to accommodate claim under the Americans with Disabilities Act (ADA). (Massachusetts Department of Correction, Old Colony Correctional Center)

U.S. Appeals Court
GANGS
SEX OFFENDERS

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

U.S. District Court
GANGS

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

U.S. Appeals Court
GANGS
SEGREGATION
TRANSFER

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

U.S. District Court
MENTALLY ILL
POLICY/PROCEDURE
SEGREGATION
SUICIDE
DUE PROCESS
LIBERTY INTEREST
PUNITIVE
SEGREGATION
PRIVILEGES

Houston v. Cotter, 7 F.Supp.3d 283 (E.D.N.Y. 2014). An inmate brought a § 1983 action against corrections officers and a county, alleging a due process violation in connection with his placement on a suicide watch while incarcerated at a county correctional facility. The parties filed cross-motions for summary judgment. The district court denied the motions, finding that summary judgment was precluded by fact issues as to whether a protected liberty interest was implicated. The inmate alleged that the county had a policy or custom permitting classification officers to keep an inmate on suicide watch as a form of punishment, after mental health personnel had deemed a continued suicide watch unnecessary. The inmate remained on suicide watch for eight days after a psychiatrist and a social worker recommended his removal from the suicide watch. The court also found a genuine dispute of material fact as to whether the inmate's conditions of confinement while he was placed on suicide watch imposed an atypical and significant hardship on him in relation to the ordinary incidents of prison life, such that it implicated a protected liberty interest. While on suicide watch, officials took away the inmate's clothing and required him to wear a suicide-safe garment-- a sleeveless smock made of a coarse, tear-resistant material and Velcro. He was not allowed to wear underwear, socks, or any other undergarment with the smock. He was housed in a stripped cell in the Behavioral Modification Housing Unit. The cell contained a bare mattress and a blanket made out of the same coarse material as the smock. Corrections officers situated immediately in front of the Plexiglass cell window constantly supervised the inmate. According to the county, suicide watch

inmates have access to the yard, a plastic spoon, a rubberized pen, the law library, showers, razors, and medical and mental health services, but the inmate claimed that he had no showers, telephone calls, prescription medications, food, or access to the law library while in the BMHU. (Suffolk County Correctional Facility, New York)

U.S. Appeals Court
MENTAL HEALTH
SEGREGATION

Keith v. DeKalb County, Georgia, 749 F.3d 1034 (11th Cir. 2014). The administrator of the estate of a pretrial detainee who was murdered by a fellow inmate in a jail's mental health unit brought an action against a county, the county sheriff, and correctional officers, alleging under § 1983 that the defendants violated the detainee's substantive due process rights. The district court denied the sheriff's motion for summary judgment based on the doctrine of qualified immunity. The sheriff appealed. The appeals court reversed. The court held that while a correctional officer on duty at the time the detainee was murdered by a fellow inmate may have acted contrary to jail policy by using a cell phone within the jail, the administrator of the detainee's estate failed to show that the use of personal cell phones within the jail was a widespread problem or that the county sheriff was aware that officers routinely violated the policy and failed to correct the problem.

The court found that the sheriff was entitled to qualified immunity on the § 1983 due process claim that he was deliberately indifferent to the safety of the detainee, in failing to segregate mental health inmates with violent histories from those with nonviolent histories and by failing to separate mental health inmates charged with a violent crime from those charged with a nonviolent crime. According to the court, even if the sheriff violated the detainee's due process rights, it was not clearly established that he had a constitutional obligation to disregard the medical expertise of mental health contractors he hired to ensure that inmates' mental health was tended to. The court also found that the administrator of the estate of the detainee failed to show that the county sheriff was subjectively aware that the jail's policy of requiring detention officers to alert mental health staff when relocating mental health inmates to different cells within the same pod was disregarded on a widespread basis, as would have subjected the sheriff to supervisory liability under § 1983.

The court found that a prior isolated incident in which a pretrial detainee was killed by another inmate when the two were placed in the same cell in the jail's mental health pod did not provide requisite notice to the county sheriff that training provided to detention officers was constitutionally deficient, as would subject the sheriff to liability under § 1983 with respect to claims arising from the subsequent murder of a pretrial detainee by a fellow inmate in the same pod. (DeKalb County Jail, Georgia)

U.S. District Court
LIBERTY INTEREST

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
MENTAL HEALTH
HANDICAPPED INMATE

Meeks v. Schofield, 10 F.Supp.3d 774 (M.D.Tenn. 2014). A state prisoner, who allegedly suffered from paruresis, a mental anxiety disorder that made it difficult to urinate without complete privacy, brought an action against the Commissioner of the Tennessee Department of Correction, its Americans with Disabilities Act (ADA) officer, a housing unit supervisor, a grievance board chairman, and a warden, asserting § 1983 claims for First Amendment retaliation and violation of his right to privacy, and alleging violations of the ADA and Title VII. The defendants moved for summary judgment. The district court granted the motion. The court held that the prisoner failed to establish retaliation claims against the ADA officer, the housing unit supervisor, and the warden. The court found that the prisoner, who was assisting other inmates with their legal work, was not engaged in "protected conduct," as required to establish a First Amendment retaliation claim against the housing unit supervisor, where the prisoner was not authorized to help other inmates with legal work, and thus was in violation of department policy. According to the court, the state prison's decision to remove exterior bathroom doors and refusal to put at least one door back to accommodate the prisoner, who allegedly suffered from paruresis, a mental anxiety disorder that made it difficult to urinate without complete privacy, was not intentionally discriminatory and did not violate the ADA.

The court held that the transfer of the prisoner to a medical housing unit did not result in denial of access to prison programs and services available to the general population, so as to support an ADA claim of discrimination on the basis of a perceived disability. The court noted that the transfer was intended to accommodate the prisoner's complaints about bathroom doors being removed in the general housing unit, and the prisoner was allowed to continue his prison job, have access to the law library, and participate in the same activities he was allowed to participate in while he was housed with the general population. (Lois M. DeBerry Special Needs Facility, Tennessee)

U.S. District Court
RACIAL DISCRIMINATION

Sherley v. Thompson, 69 F.Supp.3d 656 (W.D.Ky. 2014). A state prisoner filed a pro se § 1983 action against the Commissioner of the Kentucky Department of Corrections (DOC), a prison warden, and other prison officials, alleging that his conditions of confinement violated his Eighth Amendment rights, that he was deprived of medical treatment in violation of the Eighth Amendment, and was subjected to race discrimination in violation of the Equal Protection Clause. The district court dismissed the case, in part. The court held that the prisoner stated claims against the warden and prison administrators for violation of his equal protection rights

and his conditions of confinement. According to the court, the prisoner stated an Eighth Amendment claim against one prison nurse by alleging that the nurse failed to provide him with appropriate medical treatment for ant bites he sustained, due to his inability to pay for treatment. The prisoner alleged that the prison had a policy or custom of segregating blacks and non-blacks, and that prison officials refused to place him in a non-black cell to get away from pests in his cell. The court held that the administrators allowed ants to infest his cell for weeks and that as a result, he received ant bites that caused him to scratch until his skin was broken due to severe itching, in violation of his conditions of confinement rights under § 1983 and the Eighth Amendment. (Little Sandy Correctional Complex, Green River Correctional Complex, Kentucky)

U.S. District Court
FAILURE TO PROTECT
CELL ASSIGNMENT
GANGS
SEPARATION

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

U.S. Appeals Court
LIBERTY INTEREST
MENTALLY ILL
SOLIARY CONFINEMENT
SPECIAL NEEDS

Townsend v. Cooper, 759 F.3d 678 (7th Cir. 2014). An inmate suffering from a significant mental illness brought a § 1983 action against prison officials, claiming that imposition of a behavior action plan in response to the inmate's disruptive behavior and threats of suicide violated his Fourteenth Amendment due process rights, deprived him of the minimal civilized measure of life's necessities and exhibited an indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment for the prison officials and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the behavior action plan resulted in an atypical and significant hardship compared to ordinary prison life, and thus, the inmate had a liberty interest in not being placed on the plan sufficient to support his Fourteenth Amendment due process challenge against the prison officials, where the plan involved removal of the inmate's personal property from his cell, provision of a bag lunch, provision of a paper gown, and limited access to toiletries. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison officials acted in disregard of a substantial risk of serious harm to the inmate, and a fact issue as to whether the behavior action plan was imposed for safety reasons or as a disciplinary measure.

The court found that prison psychologists were not deliberately indifferent to the serious medical needs of the inmate when they placed the inmate on the behavior action plan, where the psychologists repeatedly visited the inmate, regularly adjusted the inmate's access to property that he could use to harm himself, and repeatedly placed the inmate on observation status to ensure his safety when he was suicidal. (Green Bay Correctional Institution, Wisconsin)

U.S. Appeals Court
SOLIARY CONFINEMENT
LENGTH OF
SEGREGATION
LIBERTY INTEREST

Wilkerson v. Goodwin, 774 F.3d 845 (5th Cir. 2014). A state prisoner brought a § 1983 action against prison officials, asserting procedural due process violations relating to his lengthy and continuing incarceration in solitary confinement. The district court denied the officials' motion for summary judgment based on qualified immunity. The officials appealed. The appeals court affirmed. The court held that the prisoner's solitary confinement constituted an atypical and significant hardship in relation to the ordinary incidents of prison life, such that a due-process liberty interest in avoiding the deprivation arose. The court noted that the prisoner's incarceration in solitary confinement was approaching an extraordinary 39 years, including 35 years before his transfer to the current prison, the prisoner's solitary confinement was effectively indefinite, and restrictions during solitary confinement were severe, including cell isolation for 23 hours per day, limited physical exercise, and limited human contact. (David Wade Correctional Facility, Louisiana)

2015

U.S. Appeals Court
TEMPERATURE

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)

<p>U.S. District Court CROWDING ADA- Americans with Disabilities Act SANITATION FLOOR-SLEEPING</p>	<p><i>Bell v. Lindsay</i>, 116 F.Supp.3d 511 (D. Md. 2015). A pretrial detainee brought a § 1983 action alleging that officers used excessive force when arresting him, in violation of the Fourth Amendment, and that prison employees subjected him to overcrowded conditions of confinement and manifested deliberate indifference to his medical needs, in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the detainee: (1) failed to state a conditions of confinement claim based on overcrowding; and (2) failed to state a claim under Title II of Americans with Disabilities Act (ADA), absent allegations that the detainee was disabled, that he was denied any benefit of prison’s services, programs, or activities, and that any such exclusion or denial was by reason of his disability. According to the court, the detainee’s allegations that he was placed into a holding room at the prison with 25 to 30 inmates without a toilet or sink and forced to sleep on the floor failed to state a § 1983 Fourteenth Amendment conditions of confinement claim, absent allegations that the detainee was in the holding room for any substantial period of time, or that employees were personally involved in the violation of detainee’s constitutional rights. (George W. Hill Correctional Facility, Maryland)</p>
<p>U.S. District Court CELL ASSIGNMENT PRETRIAL DETAINEES</p>	<p><i>Bloom v. Toliver</i>, 133 F.Supp.3d 1314 (N.D. Okla. 2015). A pretrial detainee brought a § 1983 action against a jail’s administrator, shift supervisors, detention officer, and county sheriff, alleging violations of his Fourth, Eighth, and Fourteenth Amendment rights in connection with an attack on him by another inmate while being transferred from a holding cell to a segregation cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail shift supervisor who made the decision to move the pretrial detainee from a holding cell to a segregation cell did so with a desire to punish the detainee, in violation of the Fourteenth Amendment’s due process clause. The supervisor admitted that there were cells other than the one where the detainee was moved, and testified that his intent in moving the detainee “was to discipline [the detainee] Bloom,” and that placement in any of the other cells “wouldn’t have been disciplinary.” The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the jail’s detention officer violated the pretrial detainee’s Fourteenth Amendment right to be protected from substantial risks of assault from other inmates by moving him from the holding cell to a segregation cell in which another inmate was being held.(Creek County Criminal Justice Center Oklahoma)</p>
<p>U.S. District Court SEPARATION MEDICAL CARE</p>	<p><i>Brown v. Moore</i>, 93 F.Supp.3d 1032 (W.D. Ark. 2015). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a sheriff and jail officials, alleging that his constitutional rights were violated. The defendants filed a motion for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by an issue of fact as to whether the inmate’s being housed with a prisoner who had a staph infection constituted deliberate indifference. The court held that summary judgment on the inmate’s First Amendment claim was precluded by material issues of fact as to how many newspapers were distributed at the jail, how they were distributed, whether they were available on a daily basis, and who distributed the newspapers. (Boone County Detention Center, Arkansas)</p>
<p>U.S. District Court PRETRIAL DETAINEES SEPARATION</p>	<p><i>Cano v. City of New York</i>, 119 F.Supp.3d 65 (E.D.N.Y. 2015). Pretrial detainees temporarily housed in a booking facility brought an action against a city and city officials under § 1983 alleging deliberate indifference to detainee health in violation of the Due Process Clause of the Fourteenth Amendment. The defendants moved for summary judgment and the district court granted the motion. The court held that: (1) temporarily subjecting detainees to overcrowded jail cells was not deliberate indifference; (2) failure to provide sleeping equipment, such as beds, cots, pillows, blankets, or bedding was not deliberate indifference; (3) availability of only one toilet for 24 hours in each overcrowded holding cell was not deliberate indifference; (4) alleged failure to provide food and water was not deliberate indifference; (5) police officers were not subjectively aware of a risk to the detainees; (6) police officers did not act with punitive intent; (7) placement of pretrial detainees in jail cells with alleged rodent and insect infestations was not deliberate indifference; (8) placement of pretrial detainees in jail cells with alleged violent offenders that had limited police supervision, allegedly leading to fights, thefts, and bullying, was not deliberate indifference to detainee health; and (9) alleged exposure of pretrial detainees to extreme hot or cold temperature conditions in unventilated jail cells was not deliberate indifference to detainee health that would violate the right to provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment. The court noted that the detainees were not kept in the cells for more than 24 hours, and were not harmed by the alleged overcrowding. (Brooklyn Central Booking, City of New York Police Department, New York)</p>
<p>U.S. Appeals Court DOUBLE-CELLING SEPARATION</p>	<p><i>Castro v. County of Los Angeles</i>, 797 F.3d 654 (9th Cir. 2015). An arrestee brought an action against a county, its sheriff’s department, and two officers under § 1983 for violation of his Fourth Amendment right to be protected from harm by other inmates, arising out of an attack against the arrestee by another arrestee with whom he was jailed. A jury returned a verdict for the arrestee, and the district court denied the defendants’ motion for judgment as a matter of law. The defendants appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the right of inmates to be protected from attacks by other inmates was established with sufficient clarity to guide a reasonable officer; (2) substantial evidence supported the jury’s determination that the officer was deliberately indifferent to a substantial risk of serious harm to the arrestee; (3) sufficient evidence supported the jury’s determination that the officer’s deliberate indifference was the actual and proximate cause of harm to the arrestee; (4) sufficient evidence supported the jury’s determination that the supervising officer was aware of, but disregarded, the risk to the arrestee posed by the other inmate; (5) the design of a jail by a municipality is the result of a series of deliberate choices that render the design a formal municipal policy for the purposes of municipal liability under § 1983; (6) arrestee failed to establish that the county had actual knowledge of a risk of harm from the design of the jail, as required to establish liability under § 1983; and (7) the award of future damages to the arrestee was supported by the record. The jury returned a verdict for the arrestee on all counts and awarded him \$2,605,632 in damages. The parties later stipulated to \$840,000 in attorney fees,</p>

\$18,000 in punitive damages.

The arrestee had been placed in a “sobering cell” after his arrest for public drunkenness and was seriously injured by another drunken inmate in the sobering cell. When the other inmate was admitted, staff determined that he posed a threat to officers, requiring supervision by two officers at all times. The other arrestee was placed in the same cell as the plaintiff, even though the jail policy was to place combative inmates in a separate cell, and separate cells were available but left unused on the night of the incident. The court noted that the arrestee submitted billing records from his cognitive assistant and his treating psychologist and a chart detailing the charges for medical expenses he already had incurred, and proffered several medical experts who testified to his need for ongoing medical care. (Los Angeles Sheriff’s West Hollywood Station, California)

U.S. District Court
CELL ASSIGNMENT
FAILURE TO PROTECT
SEPARATION

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

U.S. Appeals Court
CUSTODY LEVEL
WORK
CELL ASSIGNMENT

Estate of Johnson v. Weber, 785 F.3d 267 (8th Cir. 2015). The estate of a state prison guard who was murdered by inmates who attempted to escape brought a § 1983 action in state court against various prison officials and the state department of corrections (DOC), alleging constitutional violations. The action was transferred to federal court. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed. The court held that state prison officials did not shock the conscience or act with deliberate indifference by housing two prisoners with violent criminal pasts, one with a history of multiple escapes and one with a history of planning an escape, in a medium security environment, and giving them job assignments which allowed the prisoners to move within the prison, and thus, the officials did not violate the substantive due process rights of the prison guard who was murdered by prisoners during their attempted escape. The court noted that the prisoners had no history of violence or threats while incarcerated before the murder, and one prisoner had worked in the prison for many years without creating any known threat of harm to any guard. (South Dakota State Penitentiary)

U.S. Appeals Court
SEGREGATION

Goguen v. Allen, 780 F.3d 437 (1st Cir. 2015). A pretrial detainee brought a § 1983 action against correctional officers, claiming that the defendants inflicted punishment on him without due process of law and retaliated against him for filing grievances, in violation of his rights under the First, Eighth, and Fourteenth Amendments. The district court denied summary judgment to the defendants on qualified immunity grounds. The defendants appealed. The appeals court dismissed the appeal. The court held that the district court’s determination that summary judgment was precluded by genuine issues of material fact as to the motivations of the corrections officers in assigning a pretrial detainee to administrative segregation precluded granting the officers’ motion for a sovereign immunity-based summary judgment was not subject to appellate review, where the officers on appeal did not raise any purely legal issues that called into question the denial of their summary judgment motion based on qualified immunity, but rather raised challenges to the plaintiff’s evidence and recitation of facts. (Somerset County Jail, Maine)

U.S. Appeals Court
RACIAL DISCRIMINATION

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

U.S. District Court
CELL ASSIGNMENT
DOUBLE CELLING
MEDICAL CARE

Hendrick v. Wexford Health Sources, Inc., 141 F.Supp.3d 393 (D. Md. 2015). A state prisoner brought a § 1983 action against prison officials, medical staff, and the corporation that provided medical services to a prison, alleging that his reassignment from a single cell to a double cell in contravention of his medical needs violated his Eighth Amendment rights. The medical staff and corporation moved to dismiss or for summary judgment. The district court granted the motion. The court held that the prisoner’s allegations were insufficient to state a § 1983 claim against the private corporation that provided medical services to the prison, where the prisoner alleged no specific conduct by the corporation and did not allege a custom or policy of the corporation that resulted in a deprivation of his constitutional rights. The court found that medical providers did not act with deliberate indifference to serious medical needs of the prisoner, who suffered from papilledema and pseudotumor cerebri, by returning him to a double cell instead of a single cell as he requested, and thus did not violate the prisoner’s Eighth Amendment rights. The court noted that the medical director believed that having a cellmate would make the prisoner safer given his history of blacking out, there was no indication that the prisoner’s prior placement in a single cell was an absolute medical necessity, there was no indication that the prisoner’s cellmates threatened him or caused him any harm, and the prisoner’s subjective concerns for his safety

U.S. Appeals Court SOLITARY CONFINEMENT	<p>were insufficient to show an excessive risk to his health and safety. (North Branch Correctional Inst., and Wexford Health Sources, Inc., Maryland)</p> <p><i>Incumaa v. Stirling</i>, 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)</p>
U.S. Appeals Court RELIGION CELL ASSIGNMENT	<p><i>Jehovah v. Clarke</i>, 798 F.3d 169 (4th Cir. 2015). A Christian inmate brought a § 1983 action against the Commonwealth of Virginia and various employees and contractors of the Virginia Department of Corrections (VDOC), alleging that the defendants violated his free exercise rights under the First Amendment and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by prohibiting him from consuming wine during communion, requiring him to work on Sabbath days, and assigning him non-Christian cellmates. Following dismissal of some claims, the district court granted the defendants’ motion for summary judgment. The inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by fact issues regarding the wine ban. The court also found that the inmate stated an RLUIPA claim based on cell assignment, a First Amendment claim based on cell assignment, and an Eighth Amendment deliberate indifference claim. The court noted that the inmate alleged that he was required to share a cell with a particular inmate who subjected him to “anti-Christian” rhetoric, and that he was “burdened, mocked, and harassed” on account of his religious views by being housed in a cell with that inmate. (Sussex I Prison, Waverly, Virginia)</p>
U.S. District Court CIVIL COMMITMENT	<p><i>Karsjens v. Jesson</i>, 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)</p>
U.S. Appeals Court CUSTODY LEVEL TRANSFER	<p><i>King v. Zamiara</i>, 788 F.3d 207 (6th Cir. 2015). A prisoner brought an action against prison officials under § 1983, alleging First Amendment retaliation arising from his transfer to a higher security prison due to his participation in a state-court class action against the prison officials. After a bench trial, the district court found in favor of the prison officials. The appeals court reversed with respect to three officials. On remand, the district court entered judgment in favor of the prisoner and ordered compensatory damages and attorney fees, but denied the prisoner’s request for punitive damages and injunctive relief. Both parties appealed. The appeals court vacated and remanded. The court held that: (1) the district court properly awarded prisoner compensatory damages; (2) the district court’s award of compensatory damages to equal \$5 a day for each day he was kept in a higher security prison was not a reversible error; (3) the district court relied on an incorrect legal standard in concluding that the prisoner was not entitled to punitive damages; (4) the prisoner was not entitled to injunctive relief requiring the department of corrections to remove certain documents from his file that allegedly violated his due process rights; and (5) the district court abused its discretion in failing to charge up to 25% of the attorney fees awarded to the prisoner against his compensatory damages award. (Conklin Unit at Brooks Correctional Facility, Chippewa Correctional Facility, Michigan)</p>
U.S. District Court CLASSIFICATION CRITERIA DUE PROCESS SEGREGATION	<p><i>Linton v. O’Brien</i>, 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</p>

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
DOUBLE CELLING/
BUNKING

Perry v. Dickhaut, 125 F.Supp.3d 285 (D. Mass. 2015). A state prisoner brought a § 1983 action against prison officials and a prison nurse, asserting Eighth Amendment claims for excessive force in attempting to double-bunk the prisoner. The district court granted the motions in part and denied in part. The court held that prison officials did not act with deliberate indifference to the risk of serious harm from prisoner violence, as would violate the Eighth Amendment, by repeatedly double-bunking the prisoner in a cell with another prisoner. According to the court, there was no evidence that the officials knew or should have known that the prisoner and his cellmates were enemies, and making an exception to the double-bunk system for one inmate simply because he was purposefully disruptive would pose substantial risks for the overall management of prison. (Souza-Baranowski Correctional Center, Massachusetts)

U.S. District Court
MENTALLY ILL

Shorter v. Baca, 101 F.Supp.3d 876 (C.D. Cal. 2015). A pretrial detainee brought an action against a county, sheriff, and deputies, alleging under § 1983 that the defendants denied her medical care, subjected her to unsanitary living conditions, deprived her of food, clean clothes, and access to exercise, and conducted overly invasive searches. The detainee had been classified as mentally ill and housed in a mental health unit at the detention facility. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to what policies governed classification of pretrial detainees who were mentally ill. The court found that summary judgment was precluded by a genuine issue of material fact as to whether jail conditions imposed on the detainee, including permitting the detainee, who was incarcerated for 32 days, to shower only three times, only permitting the detainee outside of her cell for recreation on one occasion, failing to clean her cell, failing to provide the detainee with clean clothing, and depriving the detainee of food, amounted to punishment. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Appeals Court
RACIAL DISCRIMINATION
CELL ASSIGNMENT
RELIGION

Walker v. Beard, 789 F.3d 1125 (9th Cir. 2015). A state prisoner brought an action against prison officials challenging their classification of him as eligible to occupy a prison cell with an individual of a different race, alleging that such placement would interfere with his religious practice as an Aryan Christian Odinist, violating his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. The district court held that the prison officials' actions did not violate the prisoner's rights. The prisoner appealed. The appeals court affirmed, finding that: (1) the Aryan Christian Odinist warding ritual was a "religious exercise" under RLUIPA; (2) prison officials' classification of the state prisoner under a housing policy substantially burdened the prisoner's ritual; (3) prison officials' compliance with constitutional restrictions on racial segregation in prisons was a compelling governmental interest under RLUIPA; (4) prison officials' refusal to exempt the prisoner from the housing policy's classification scheme was the least restrictive means of furthering a compelling interest, and thus the officials' actions did not violate the prisoner's rights under RLUIPA; and (5) prison officials' interest in complying with the Equal Protection Clause was reasonably related to legitimate penological interests, and thus the officials' refusal to exempt the state prisoner from the housing policy's classification scheme did not infringe on the prisoner's rights under the Free Exercise Clause of the First Amendment. (California Department of Corrections and Rehabilitation)

2016

U.S. Appeals Court
MENTALLY ILL
CELL ASSIGNMENT
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
SEGREGATION
LENGTH OF SEGREGATION

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 9: CONDITIONS OF CONFINEMENT

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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.

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)

1970

U.S. District Court
ISOLATION Davis v. Lindsay, 321 F.Supp. 1134 (S.D. N.Y. 1970). Incarceration in isolation and under certain circumstance violates the eighth amendment. (City Jail, New York)

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

U.S. District Court
ISOLATION
DORMITORIES
LABOR
RACIAL
DISCRIMINATION
PROGRAMS
TRUSTY SYSTEM 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 trustees 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. 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"; and 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 trustees had unsupervised power over other inmates was essential to the establishment of prison system meeting constitutional standards. (Arkansas Prison System)

1971

U.S. Supreme Court
CHALLENGES Wilwording v. Swenson, 404 U.S. 249 (1971) (Per Curiam). A state habeas corpus petition by inmates confined in maximum security at the Missouri State Penitentiary challenging conditions and disciplinary measures, but not seeking release, is dismissed. The inmates then brought a federal habeas corpus action. While state habeas corpus

proceedings were exhausted, the District Court for the Western District of Missouri dismissed the complaint on the grounds that 28 U.S.C. Section 2254 had not been satisfied as the inmates had not invoked any of a number of possible state remedies. The Eighth Circuit Court of Appeals affirmed and the inmates petitioned the Supreme Court for a writ of certiorari. (Reversed and Remanded.)

HELD: The exhaustion requirement of 28 U.S.C. Section 2254 is merely an accommodation of the federal system designed to give the state an initial opportunity to pass upon and correct alleged violations of its prisoners' federal rights; and regardless of the remedy involved, Missouri courts have not granted a single hearing on conditions of confinement in state prisons. 404 U.S. at 250.

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 Penitentiary, Missouri)

1972

U.S. District Court
BEDDING
LAUNDRY
CLOTHING

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

U.S. District Court
STATE
REQUIREMENTS

Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Where conditions of confinement do not meet the minimum requirements of state statutes, the court need not reach the subjective criteria of cruel and unusual punishment. (Dallas County Jail, Texas)

1974

U.S. District Court
STATE
REQUIREMENTS

Campise v. Hamilton, 382 F.Supp. 172 (S.D. Tex. 1974), cert denied, 429 U.S. 1102 (1976). Sheriff knew or should have known that the prisoner was kept under inhumane conditions and is liable under Section 1983, which incorporates state standards. (Brazos County Jail, Texas)

1975

U.S. District Court
PUNITIVE
SEGREGATION
MEDICAL CARE

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
DINING

Dillard v. Pitches, 399 F.Supp. 1225 (C.D. Calif. 1975). Fact that jail had no dining hall to accommodate prisoners and that prisoners were thus forced to eat standing up in halls or in their cells contributes to court's finding of constitutional violation. (Los Angeles County Jail, California)

U.S. District Court
REMEDIES

Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), aff'd, 563 F.2d 741 (5th Cir. 1977). Where it can be shown that prison conditions are so bad as to constitute cruel and unusual punishment, the relief to be afforded may properly include an order compelling the provision of basic rehabilitative services and facilities. (Duval County Jail, Florida)

1976

U.S. District Court
DEFENSES

Rodriguez v. Jiminez, 409 F.Supp. 582 (D. P.R. 1976). Inadequate resources can never be an adequate justification for the state's depriving persons of constitutional rights. (San Juan District Jail)

1977

U.S. Appeals Court
DEFENSES

Smith v. Sullivan, 553 F.2d 373 (5th Cir. 1977). Fiscal shortages are no defense to constitutional violations. (El Paso County Jail, Texas)

U.S. District Court
MEDICAL CARE
LEGAL ASSISTANCE

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

1978

U.S. District Court
ISOLATION
CELLS

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

U.S. District Court
DOUBLE CELLING
CELL CAPACITY
TOTALITY OF
CONDITIONS
ISOLATION
CROWDING

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

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

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

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

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

The Missouri State Penitentiary is overcrowded but, because it has so much acreage within the walls, because of the many and varied activities available to inmates, and because of the relative freedom enjoyed by inmates to utilize recreational

areas and the many activities available to them, the penitentiary, viewed as a whole, is not now so overcrowded as to be intolerable, inhumane, totally unreasonable in light of the modern conscience, or shocking to the conscience of the court.

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

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

U.S. Supreme Court
PUNITIVE
SEGREGATION

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.)

HELD: "[W]e find no error in the inclusion of a thirty day limitation on sentences to punitive isolation as a part of the district court's comprehensive remedy." 437 U.S. at 688.

NOTE: This holding was unquestionably based on the particular facts presented by this case, and it would be error to interpret this as the U.S. Supreme Court's position on length of punitive isolation. (Arkansas Prison System)

U.S. District Court
DOUBLE CELLING
CELL CAPACITY
MEDICAL CARE
CROWDING

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.)

1979

U.S. Supreme Court
DOUBLE CELLING
CAPACITY
DEFENSES

Bell v. Wolfish, 441 U.S. 520 (1979). Pretrial detainees confined in the Metropolitan Correction Center (MCC) in New York City challenged virtually every facet of the institution's conditions and practices in a writ of habeas corpus, alleging such conditions and practices violate their constitutional rights.

MCC is a federally operated, short-term detention facility constructed in 1975; Eighty-five percent of all inmates are released within sixty days of admission. MCC was intended to include the most advanced and innovative features of modern design in detention facilities. The key design element of the facility is the "modular" or "unit" concept,

whereby each floor housing inmates has one or two self-contained residential units, as opposed to the traditional cellblock jail construction. Within four months of the opening of the twelve-story, 450 inmate capacity facility, this action was initiated.

The U.S. District Court for the Southern District of N.Y. enjoined no less than twenty practices at the MCC on constitutional and statutory grounds, many of which were not appealed. See, United States Ex Rel Wolfish v. Levi, 439 F.Supp. 114 (S.D.N.Y.). The Second Circuit Court of Appeals affirmed the district court decision, See, Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), and reasserted the "compelling-necessity" test as the standard for determining limitations on a detainee's freedom.

The U.S. Supreme Court granted certiorari "to consider the important constitutional questions raised by [recent prison decisions] and to resolve an apparent conflict among the circuits." 441 U.S. at 524: Do the publisher-only rule, the prohibition on receiving packages from outside sources, the search of living quarters, and the visual inspection of body cavities after contact visits constitute punishment in violation of the rights of pretrial detainees under the due process clause of the fifth amendment?

HELD: "Nor do we think that the four MCC security restrictions and practices...constitute 'punishment' in violation of the rights of pretrial detainees under the due process clause of the fifth amendment." 441 U.S. at 560, 561.

REASONING: a. [T]he determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose. 441 U.S. at 561.

b. Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both...[W]e think that these particular restrictions and practices were reasonable responses by MCC officials to legitimate security concerns. [Detainees] simply have not met their heavy burden of showing that these officials have exaggerated their response to the genuine security considerations that activated these restrictions and practices. 441 U.S. at 561, 662.

CLOSING COMMENTS OF MAJORITY OPINION: "[T]he inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the constitution, or in the case of a federal prison, a statute. The wide range of 'judgment calls' that meet constitutional and statutory requirements are confided to officials outside of the judicial branch of government." 441 U.S. at 562.

GENERAL NOTES: The Court saw this case, a challenge to virtually every aspect of the operation of a state of the art detention facility, as an opportunity to clarify the judiciary's role in the operation of prisons. The five-four decision indicates there was no general consensus as to what that role is, or how it should be applied. No less than three possible standards of review are contained in the majority and dissenting opinions: 1) A "rational basis", subjective test; 2) A balancing of interests test; 3) An objective standard of review.

Despite J. Rehnquist's statement that "our analysis does not turn on the particulars of the MCC concept or design," the majority's reasoning frequently looks to that concept or design for justification of its positions. 441 U.S. at 525. Clearly, the "double-bunking" holding should be interpreted as applicable only to facilities where:

- a) Inmates are locked in their cells a maximum of eight hrs. a day and have access to a wide range of activities and programs; and
- b) No inmate is detained longer than sixty days.

Situations other than these likely will not fall within the strict holding on this issue. (Metropolitan Correction Center (MCC), New York)

U.S. District Court
SEPARATION
DIVERSION

Doe v. Lally, 467 F.Supp. 1339 (D. Md. 1979). An inmate is entitled to be reasonably free from homosexual attack and to protection to maintain that freedom. The presence of such attacks on a regular basis violates the eighth amendment. Failure to separate the inmates in the diagnostic center from the general population inmates, which results in regular incidents of homosexual assault, borders on gross negligence and removes any good faith defense from the defendants. Since there is a new facility under construction, the court does not undertake to provide extensive relief, but does require the defendants to devise a plan to separate the diagnostic inmates from the institutional general population as much as practicable. While the court rejects a major order on classification in light of the impending new facility, it does require some attention to the classification process to attempt to avoid such attacks by preventing minimum security individuals from ever entering the facility and minimizing the length of stay in the facility. (Maryland Reception and Diagnostic Center)

U.S. District Court
CROWDING
CELLS
DORMITORIES

Feliciano v. Barcelo, 497 F.Supp. 14 (D.P.R. 1979). The institution is found to be overcrowded. The court orders that the housing shall immediately provide at least thirty-five square feet of space per inmate and that eventually, standards of seventy square feet per inmate in cells and fifty-five square feet per inmate in dormitories be implemented. (Correctional System, Puerto Rico)

State Appeals Court
ISOLATION
MEDICAL CARE
BEDDING

Pruitt v. Joiner, 395 N.E.2d 276 (1979). The Indiana Court of Appeals for the Third District has ruled that even where conditions of pretrial detention include "beatings, deprivation of food, detention in solitary cells without bedding, punishment without due process, and denial of medical care, visitation, and mailing privileges," the use of writ of habeas corpus is not a satisfactory method of obtaining relief. The court specifically refuted the broad use of habeas corpus in the federal system, which was argued by the appellants. "Indiana.. has not chosen to expand the interpretation, this state has taken the strict common law. By statute and judicial interpretation, this state has taken the strict common law position that habeas corpus may be used only to inquire into the legality of the cause of the restraint." Since the appellants did not challenge the legality of their restraint but rather the manner used to accomplish it, the court reversed the lower court decision.

In a dissenting opinion one of the three panel judges argued that such a separation of habeas corpus relief from due process considerations should not occur:

Not only has punishment been administered without a trial as required by due process of law, but the punishment administered here could be characterized as cruel and unusual even after trial and conviction...The petitioners are entitled to immediate relief from the Indiana courts. This is not a question of civil rights. It is a question of due process of law; under what conditions does a lawful executive commitment become unlawful as a violation of due process of law?

(Lake County Jail, Indiana)

1980

U.S. Appeals Court
CHANGE OF
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
EQUAL PROTECTION
WOMEN

Bukhari v. Hutto, 487 F.Supp. 1162 (E.D. Vir. 1980). The Court finds that the differences in programming and conditions between women's and men's facilities violates equal protection but pretermits any remedy. (Virginia Correctional Center for Women, Goodland)

U.S. Appeals Court
CELLS
DORMITORIES

Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980). The U.S. Court of Appeals for the Eighth Circuit ruled that the county jail shall provide 130-154 square feet of space for four inmates detained more than sixteen hours per day. The same space must be available where three are held, if they are detained more than one week. (Sebastian County Jail, Arkansas)

U.S. District Court
CROWDING

Capps v. Atiyeh, 495 F.Supp. 802 (D. Ore. 1980). The court suggests a five part test to determine whether overcrowding is unconstitutional:

1. The duration of prison confinement;
2. The degree to which the population exceeds the institution's design capacity;
3. The size of the living quarters and the number of hours that an inmate must spend therein;
4. The effects of the increased population on the prisoner's mental and physical health;
5. The relative permanency of the overcrowding.

The court finds the institution to be overcrowded and accepts the defendants' plan to relieve the overcrowding without necessarily endorsing any portion of it. (Oregon State Penitentiary)

U.S. District Court
MEDICAL CARE
FOOD

Green v. Ferrell, 500 F.Supp. 870 (S.D. Miss. 1980), *rev'd*, 664 F.2d 1292. A Mississippi District Court Judge had dismissed a suit brought by inmates of the Adams County, Mississippi Jail. On appeal, the higher court ordered the case to continue. The inmates challenged conditions at the jail, which was built in 1978 at a cost of \$2,000,000. Among the inmate's complaints were cold food, inadequate medical care, improper mail regulations and unsatisfactory classification procedures. In addition, one inmate alleged that he received constitutionally inadequate medical care and offered a sworn affidavit from a physician in support of his claim. Regarding the general claims brought by the inmates, the court ruled in favor of the jail administration on every item.

The court also ruled that the inmate with the malpractice charge had failed to state a claim of constitutional significance. Notwithstanding the physician's affidavit, that the man had not received optimum medical care, the court ruled that the claim

was not sufficient to confer jurisdiction. It stated that in order to confer jurisdiction on the court, the inmate was required to demonstrate nothing less than "deliberate indifference" to his medical needs. Estelle v. Gamble 429 U.S. 97 (1976). The court further noted that the standard used in civil rights claims is higher than that for medical malpractice claims.

The disciplinary procedure complied with due process. There is no constitutional right for jail inmates who only lose privileges to have any disciplinary system whatsoever. (Adams County Jail, Mississippi)

U.S. District Court
SANITATION
FIRE SAFETY
VENTILATION
WINDOWS

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

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

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

An entirely inadequate ventilation system at the county jail constituted a constitutionally intolerable living condition.

Deficiencies in the county jail, including lack of fire escapes, absence of windows, lack of necessary fire doors, and limited number of fire extinguishers amounted to constitutionally intolerable conditions.

Failure of county jail authorities to provide each inmate one hour per day of exercise outside cells was a constitutionally intolerable condition. (Clay County Jail, Missouri)

U.S. District Court
SEPARATION

Morris v. Travisono, 499 F.Supp. 149 (D. R.I. 1980). The court held that: (1) prior consent judgment establishing regulations governing disciplinary, classification, and mail procedures at state prisons would not be vacated, either on basis of reversal or prior judgment upon which the consent judgment was allegedly based or on basis of claimed changes in factual circumstances; (2) evidence established that violations of such regulations occurred in the officials' failure to devise treatment and rehabilitation plan for inmate, in officials' failure to provide the prisoner with certain privileges due an inmate classified in category in which the prisoner was classified, and the officials' employment of inappropriate criteria in continuing to classify the prisoner in such category; and (3) prison officials' failure to enumerate more specific criteria than that contained in the prior consent judgment in order to evaluate the prisoner's classification status did not deny the prisoner due process of law. The use of segregation, per se, does not violate the eighth amendment even where the period of segregation for a particular inmate extends into years. (Adult Correctional Institution, Rhode Island)

U.S. District Court
HEARING IMPAIRED

Pyles v. Kamka, 491 F.Supp. 204 (1980). [A qualified sign language interpreter is to be provided upon request, or if it otherwise appears necessary, to]: (1) any hearing impaired inmate in any Adjustment Team hearing or in any disciplinary matter; (2) to any hearing impaired inmate in the provision of any medical, psychological or psychiatric care; (3) to any hearing impaired inmate in the provision of any counseling, or in any on-the-job training program, vocational training program or educational program. (House of Corrections, Maryland)

U.S. Appeals Court
SEPARATION
THREATS

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 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 the plaintiffs 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, its 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. (State Prison, Reidsville, Georgia)

U.S. District Court
POPULATION
CROWDING
MEDICAL CARE
SANITATION
FACILITIES
REMEDIES

West v. Lamb, 497 F.Supp. 989 (D. Nev. 1980). The latest round of litigation concerning conditions at the Las Vegas Central Detention Facility and Annex resulted in a court ordered reduction in the prisoner population. The United States District Court for Nevada began hearing complaints about conditions at these facilities after a class action suit was filed in August, 1977. In a series of inquiries since that time, the court has heard from experts in the field of detentions and corrections. These experts inspected the jails and reported that brutal, depraved, cruel, uncivilized and inhuman treatment of the inmates was occurring. The experts found severe overcrowding, racial segregation, poor morals among correction officers and inmates alike, regularly occurring homosexual attacks, inadequate health care, unsanitary conditions, inadequate food services, no recreational, religious, educational or exercise facilities and poor visitation facilities. After reviewing this information, the court stated that if there were any other correctional facilities available in southern Nevada it would close down the subject jails. The court found the jails unfit for human habitation and deemed it doubtful that they could be made fit without gutting and rebuilding. The court stated that a delicate balance must be maintained between public safety and the confining of inmates in as humane conditions as possible. It held that public safety must always come first and that the lives and safety of inmates are secondary. The court then ordered that the inmate population be reduced from 500 to 178 and that jail officials attain this goal within 180 days. The court then cautioned state judges not to enlarge the population by ordering prisoners to be housed in the jail after the limit had been reached. (Las Vegas Central Detention Facility and Annex, Nevada)

1981

U.S. Appeals Court
PUNITIVE
SEGREGATION
CELL CAPACITY
LIGHT
TOILETS
SHOWERS
MEDICAL CARE
BEDDING

Chavis v. Rowe, 643 F.2d 1281 (7th Cir. 1981). Reversing a dismissal granted by a federal district court, the United States Court of Appeals for the Seventh Circuit held that the failure of a disciplinary review board to provide an inmate with exculpatory evidence relating to the charges against him amounted to an actionable violation of his right to due process. The court also ruled that the inmate's allegations of the conditions to which he was exposed during six months in segregation raised a valid claim of cruel and unusual punishment. The U.S. Court of Appeals of the Seventh Circuit held that failure to provide the inmate with the polygraph results tending to exonerate him was an actionable violation of his constitutional right to due process. The court also noted that failure of the disciplinary committee to inform the inmate in writing of its reasons for finding him guilty amounted to a separate, actionable violation of his due process rights. Finally, the court stated that the inmate's eighth amendment claims of cruel and unusual punishment arising from his confinement in segregation should not have been dismissed, even though he did not specifically allege bad faith in his complaint. The inmate made the following allegations, which if proven would amount to cruel and unusual punishment: confinement in a 5x7 foot cell with four other residents; inadequate bedding, light, toilet facilities, and showers; insufficient access to legal materials, medical and dental care and food. The court thus reversed the district court's order of dismissal and reinstated the case. (Statesville Correctional Center, Joliet, Illinois)

U.S. District Court
PLUMBING
CROWDING

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

U.S. District Court
CROWDING
REMEDIES

Hendrix v. Faulkner, 525 F.Supp. 435 (N.D. Ind. 1981), cert. denied, 104 S.Ct. 3587 (1983), aff'd, 715 F.2d 269. The conditions of overcrowding at the Indiana State Prison constitute a violation of the eighth amendment in light of the physical plant and limits on staffing. Therefore, prison officials were required to take immediate action to ameliorate the conditions. Contributing to the limited time out of the cell is a sheer number of inmates. There was testimony that some inmates had not had outside recreation in five months. However, other conditions at the prison did not rise to the level of constitutional violations. (Indiana State Prison)

U.S. Appeals Court
SANITATION
SEGREGATION
CROWDING
FOOD
TOTALITY OF
CONDITIONS

Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981). Prisoners being held in county jail bring 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 prisoners appealed. 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. The court determined that conditions of confinement were unconstitutional under the eighth amendment or fourteenth amendment, the court did not assay separately each of the institutional practices but looked to the totality of conditions. Further, the court concluded that it was limited to enforcing constitutional standards rather than assuming superintendence of jail administration. (Jackson County Jail, Pascagoula, Mississippi)

U.S. District Court
CROWDING
REMEDIES

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

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

(Chatham County Jail, Georgia)

U.S. Supreme Court
DOUBLE CELLING
POPULATION
CELLS
SANITATION
SAFETY
STAFFING
TOTALITY OF
CONDITIONS

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

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

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

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

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

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

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

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

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

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

U.S. District Court
DOUBLE CELLING
CROWDING
REMEDIES
TOTALITY OF
CONDITIONS

Smith v. Fairman, 528 F.Supp. 186 (C.D. Ill. 1981), rev'd, 690 F.2d 122 (7th Cir. 1982) cert. denied, 103 S.Ct. 2125 (1983). Officials at the Pontiac, Illinois State Penitentiary had been ordered by a federal district court to end the practice of placing two inmates in a cell designed many years ago to house only one person. The order came as a result of an action filed by numerous former inmates and one current inmate of the institution, seeking to challenge the prison's policy of punishing inmates who refused to accept a cell with another inmate. The district court heard a great deal of evidence on the issue of double celling at Pontiac. A number of prisoners also testified, describing the problems resulting from the double celling, such as attacks by other cell mates, loss of property, and difficulty in practicing their religion. The court made a lengthy comparison between the conditions at Pontiac and those in Rhodes v. Chapman, 101 S.Ct. 2392 (1981). The court indicated that in Rhodes, a case in which double celling was approved, the conditions were markedly different. The facility in Rhodes was new, relatively quiet and modern, and the inmates were permitted to be out of their cells on a regular basis. In this case, the prison was old and noisy, and the cells were small.

Furthermore, a number of the inmates were required to spend practically all of their waking hours in their cells. The district court noted that Rhodes made clear the point that prisoners need not be free of discomfort. However, the court said, "deplorable and sordid conditions cannot be tolerated." The court noted that the conditions were so bad at Pontiac that even the prison's own medical director testified that the punishment meted out to prisoners was cruel and unusual. Summing up, the court said: "...the inescapable conclusion is that the Pontiac Correctional Center is overcrowded, antiquated and has inadequate facilities to provide significant and constructive correctional programs to the inmates." The court then ordered submission of a detailed plan calling for the eventual end of the double celling practices at Pontiac. On appeal, the double celling was allowed. (State Penitentiary, Pontiac, Illinois)

U.S. District Court
CROWDING
REMEDIES
DORMITORIES

Vazquez v. Gray, 523 F.Supp. 1359 (S.D. N.Y. 1981). Court outlines a response to overcrowding. The United States District Court found the Westchester County Jail overcrowded and determined that the proper method of determining a remedy was to examine the causes of the overcrowding. The court considered and rejected orders which reduce bail or set a population limit for the institution. Instead, it ordered:

- 1) that no mattresses be placed on the floor for sleeping,
- 2) that no more than two persons be confined in a cell,
- 3) that the use of day rooms for housing for more than five days be prohibited, and that the court be advised where individuals are kept in such housing for more than forty-eight hours.

The court approved using dormitories as long as the use complied with state regulations and as long as the use of the dormitories did not deviate from the plan which they provided to the court. The court refused to enter a comprehensive order regarding the general conditions of the institution until the provisions of the initial order had time to be implemented. (Westchester County Jail, New York)

U.S. Appeals Court
SEPARATION
PRETRIAL
DETAINEES

Villanueva v. George, 659 F.2d 851 (1981). A majority of the U.S. Court of Appeals for the Eighth Circuit, sitting en banc, ruled that the allegations of a pretrial detainee raised a legitimate factual issue as to the constitutionality of the conditions to which he was subjected during his pretrial confinement. The court found, therefore, that the trial judge should have presented the case to the jury rather than directed the verdict against the plaintiff. The circuit court found that the jury might have concluded that the conditions of confinement were punitive in nature. Since the due process clause prohibits the punishment of persons prior to a judgment of conviction, plaintiff Robert Villanueva would have to persuade the jury that punitive conditions existed during his pretrial detention. According to the decision:

The question of whether there is sufficient evidence of the defendants' punitive intent is one for the jury. Moreover, the jury may 'infer that the purpose was punishment from the fact that the condition either bore no reasonable relation to a legitimate goal or exceeded what was necessary for attaining such a goal...'

Putnam v. Gerloff, 639 F.2d 415 at 420 (8th Cir. 1981). See also Bell v.

Wolfish, 441 U.S. at 539. There is evidence in this record from which the jury could have reasonably concluded that Villanueva's conditions of confinement were unnecessarily excessive and bore no reasonable relation to a legitimate governmental interest...We emphasize that our decision is not based solely on the fact that Villanueva was confined in a cell measuring six feet by six feet, see Rhodes v. Chapman, 29 CrL 3061 (1981). It is rather based upon the totality of the circumstances, including cell size, time spent in the cell, lack of opportunity for exercise or recreation, general sanitary conditions, and the fact that the appellant's past behavior demonstrated an ability to be confined under less restrictive conditions without incident.

In dicta the court suggests that the classification procedure which resulted in the plaintiff's being placed in segregation while awaiting trial was valid. The procedure took into account the nature of the crime charged and particularly whether the crime was violent or aggressive, the prisoner's desire to remain in a particular classification, the psychological state of the individual and other similar factors. (St. Louis County Adult Correctional Facility, Missouri)

1982

U.S. District Court
JUVENILES
TOTALITY OF
CONDITIONS
SEPARATION
REMEDIES

D.B., et al. v. Graham Tewksbury, et al., 545 F.Supp. 896 (D. Ore. 1982). A federal district court judge in Oregon rules in a class action suit brought by Oregon Legal Services on behalf of children confined in the Columbia County Correctional Facility (CCCF). Judge Helen J. Frye held that it is unconstitutional to hold children in adult jails, whether they are accused status offenders or are alleged to have committed crimes. Judge Frye first ruled that the conditions at CCCF constituted punishment, citing a failure by the jail to provide any form of work, exercise, education, recreation, recreational materials, adequate hygiene, minimal privacy, adequate diet or medical care, emergency health service, "treatment of emotionally disturbed children who panic in a jail setting," or visits with families. The twenty-three page opinion cited numerous other deprivations.

Judge Frye indicated that the decision as to whether these conditions are punishment was "simple," since the director of the Columbia County Juvenile Department, Graham Tewksbury, "has stated expressly that he intends to punish children" held in the jail. The court cited Bell v. Wolfish, 441 U.S. 520 (1979), stating that the due process clause of the fourteenth amendment requires that a pretrial detainee not be punished.

However, Judge Frye went further and ruled that the confinement of children, whether status offenders or accused of committing crimes, in any adult jail is unconstitutional:

...[T]o put such a child [status offender] in a jail--any jail--with its criminal stigma--constitutes punishment and is a violation of that child's due process rights under the fourteenth amendment...

Would it be constitutionally permissible to lodge children accused of committing crimes [in modern, 'enlightened' kinds of jails]?...Due process - or fundamental fairness - does not guarantee to children all the rights in the adjudication process which are constitutionally assured to adults accused of committing crimes. For example, children are not entitled to a jury trial, to indictment by grand jury, or to bail. In lieu of these constitutional rights, children are not to be treated or considered as criminals...

Juvenile proceedings, in the State of Oregon as elsewhere, are in the nature of a guardianship imposed by the state as parens patriae to provide the care and guidance that under normal circumstances would be furnished by the natural parents. It is, then, fundamentally fair constitutional - to deny children charged with crimes, rights available to adults charged with crimes if that denial is offset by a special solicitude designed for children. But when the denial of constitutional rights for children is not offset by a 'special solicitude' but by lodging them in adult jails, it is fundamentally unfair. When children who are found guilty of committing criminal acts cannot be placed in adult jails, it is fundamentally unfair to lodge children accused of committing criminal acts in adult jails...

The supervisors at jails are guards - not guardians. Jails hold convicted criminals and adults charged with crimes...A jail is not a place where a truly concerned natural parent would lodge his or her child for care and guidance. A jail is not a place where the state can constitutionally lodge its children under the guise of parens patriae.

To lodge a child in an adult jail pending adjudication of criminal charges against that child is a violation of that child's due process rights under the fourteenth amendment to the United States Constitution.

Since this decision, all children have been removed from CCCF. However, Oregon state law permits placement of juveniles in adult facilities under certain circumstances. (Columbia County Correctional Facility, Oregon)

U.S. Appeals Court
DOUBLE CELLING
CROWDING

Glynn v. Auger, 678 F.2d 760 (8th Cir. 1982). Double-celling is not cruel and unusual punishment. The eighth Circuit Court of Appeals held that the double-celling of an Iowa Men's Reformatory (IMR) prisoner did not violate the ex post facto clause. The court also found that the policy did not constitute cruel and unusual punishment. After reaching the highest level of a prison incentive program, the prisoner was housed in a single cell in a remodeled housing unit of the prison. Due to an increase in the number of inmates, officials began double-celling a portion of the building. When the plaintiff objected to this procedure, he was given the choices of being double-celled, being single-celled in a smaller cell with no loss of privileges or being placed in a lower level cell with reduced privileges. The inmate brought suit contending that the double-celling was an ex post facto increase in his punishment. The district court disagreed, finding that the action was not a punishment. The inmate then appealed. The Circuit Court agreed with the lower court, stating: "The constitutional prohibition against ex post facto law was designed to secure substantial personal rights against arbitrary and oppressive legislative action, and not to obstruct mere alteration in conditions deemed necessary for the orderly infliction of humane punishment." Malloy v. South Carolina, 237 U.S. 180, 35 S.Ct. 507 (1915). The appeals court also found that the double-celling did not constitute cruel and unusual punishment. (Iowa Men's Reformatory)

U.S. District Court
CROWDING
REMEDIES
DEFENSES

Gross v. Tazewell County Jail, 533 F.Supp. 413 (W.D. Vir. 1982). The prison inmates' constitutional rights are violated as a result of overcrowding in a county jail. When injunctive relief was necessary to arrest the violations of constitutional rights, good faith on the part of the prison officials was no defense. The fact that state law prohibited or failed to authorize a party to alleviate a wrong did not excuse a continuing violation of fundamental guarantees. The U.S. District Court for the western district of Virginia entered an injunction against crowding in the Tazewell County Jail, finding significant differences between jails and prisons relative to overcrowding. Responding to claims by officials that the transfer of the jail inmates would only result in overcrowding elsewhere, the court answered:

It is simply not appropriate to lump all inmates into an abstract category and assert that overcrowding exists everywhere...A comparison of inmates versus available beds is not the true index of unconstitutional overcrowding. The manifestations of such overcrowding in daily life must be considered. Hite v. Leeke, 564 F.2d 670 (4th Cir. 1976). It is abundantly clear that extreme overcrowding in a local jail is of greater practical effect and constitutional consequence than in a larger institution or a common road camp. Simply stated, all overcrowding is not equal. Perhaps more importantly, the local jail houses a high percentage of pretrial detainees...As a matter of common sense and fundamental fairness, the criminal justice system must ensure that pretrial detainees are not housed in more deprived circumstances than those accorded to convicted persons. Without doubt, the oppressive conditions of the instant case do not withstand the stricter degree of scrutiny which must necessarily be applied in situations involving pretrial detainees. Overcrowding in a local jail cannot be quantitatively equated with overcrowding in a state penal institution.

(Tazewell County Jail, Virginia)

U.S. District Court
DOUBLE CELLING
PLUMBING
SANITATION
MEDICAL CARE
SEPARATION
WOMEN
REMEDIES

Grubbs v. Bradley, 552 F.Supp. 1052 (M.D. Tenn. 1982). Conditions at several institutions are cited. Prisoners in the Tennessee correctional system brought action against the state challenging the constitutionality of the conditions of confinement in several of Tennessee's adult penal institutions. The United States District Court held that certain conditions of confinement and practices amounted to cruel and unusual punishment, including: double-celling of inmates in certain units of the state penitentiary and the Nashville Regional Correctional Center; confinement of any inmate for more than one week in a cell not equipped with hot water; confinement in Block D of the Brushy Mountain Prison and the Main Building at the Nashville Center; the failure to maintain minimum sanitary conditions in food storage, preparation and service areas at certain facilities; the failure to protect inmates at several facilities; the failure to provide minimally adequate medical care for prisoners; the confinement of inmates in segregation status for more than one week without any opportunity for exercise at the prison for women. A federal master was ordered and master plans were required. A classification system may be required. While there is no constitutional right to a classification system, where the absence of such a system substantially contributes to violence in the institution, such a system may be required. Here, the court notes that the classification system is virtually meaningless since cell and work and even institutional assignments are not really made on the basis of other than available space. The court finds that inmates do not have a right to participate in the classification decision since that is a matter of administrative discretion. Inmates have no constitutional claim to any particular security classification, but if proof shows a sufficient connection between an improper classification system and the violation of a constitutionally protected right, such as the right to be free from excessive violence, there may be just cause for court intervention. (Tennessee Correctional System)

- State Court
BEDDING
CLOTHING
MEDICAL CARE
HYGIENE
- Hickson v. Kellison, 296 S.E.2d 855 (W.Vir. 1982). County jail conditions are unconstitutional. General conditions at the Pocahontas County Jail were found to violate constitutional standards by a federal district court, noting that the jail failed to provide the inmates with personal hygiene supplies, bedding and towels, adequate clean clothing, communication materials for writing, visitation facilities, adequate medical care and outdoor exercise. The court stated that the legislature required counties to maintain jails at reasonable and acceptable standards. (Pocahontas County Jail, West Virginia)
- U.S. Appeals Court
TOTALITY OF
CONDITIONS
LIGHTING
FIRE SAFETY
FOOD
SANITATION
VENTILATION
PLUMBING
MEDICAL CARE
REMEDIES
- Hoptowit v. Ray, 682 F.2d 1237 (9th Cir. 1982). Eighth amendment violations cannot be based on "totality of conditions." In an opinion discussing the Washington State Penitentiary, the Ninth Circuit Court of Appeals held that certain conditions in the facility are unconstitutional.
- The court held that an eighth amendment violation may not be based solely on a combination of conditions, if none of the conditions would be unconstitutional if viewed alone.
- The lower court had found that lighting was substandard, plumbing was unsatisfactory, fire prevention was substandard, food service did not meet public health standards, that there was evidence of vermin infestation, and that ventilation was inadequate. The court of appeals accepted these findings, but noted that none of these conditions standing alone would be unconstitutional, thus reversing the lower court's order to improve those conditions. The court of appeals did find that the level of violence was unconstitutional, and that the medical care did not meet constitutional standards, but rejected the district court's remedies. (Washington State Penitentiary)
- U.S. District Court
CELLS
PLUMBING
- Lyons v. Papantoniou, 558 F.Supp. 4 (E.D. Tenn. 1982), aff'd, 705 F.2d 455 (6th Cir. 1982). Transfer from one county jail to another does not violate constitutional rights. Since the federal constitution did not secure the right of an inmate to be confined in any particular jail, the federal district court did not have reason to review the transfer. The inmate's temporary twenty-four hour confinement in the latter jail in a cell lacking adequate bathroom facilities and cigarettes did not amount to cruel and unusual punishment. (Carter County Jail, Tennessee)
- U.S. District Court
POPULATION
REMEDIES
- 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. District Court
CROWDING
REMEDIES
- 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)
- State Court
TOILETS
PLUMBING
- Michaud v. Sheriff of Essex County, 458 N.E.2d 702 (Mass. 1983). Court orders inmates out of cells until toilets and sinks are installed. Cells in several Massachusetts jails are not to be used until flushing toilets and hand-washing sinks with hot and cold running water are installed, according to a state court ruling. Existing toilet facilities in the cells consist of metal or plastic buckets without lids, shared by several inmates. Emptied only once daily, inmates are subject to continually smelling the odor of their wastes. The cells are not to be used until the ordered improvements are made. (Essex County Jail and House of Corrections, Lawrence, Massachusetts)
- U.S. Appeals Court
JUVENILES
ISOLATION
- Santana v. Collazo, 714 F.2d 1172 (1st Cir. 1983), cert. denied, 104 S.Ct. 2352 (1983). Juveniles who are incarcerated involuntarily do not have constitutional right to rehabilitative treatment or training; conditions of solitary confinement warrant scrutiny. An opinion by the United States Supreme Court in a class action suit against juvenile camps in Puerto Rico clarified the rights of juvenile inmates.
- A district court ruling concerning the "right to treatment" and the length of time which could be spent in isolation was prompted by a class action suit of juvenile

residents of the Mayaguez and Maricao Juvenile Camps in Puerto Rico. The United States Supreme Court addressed the first issue in the case and offered guidelines for considering the appropriateness of isolating juveniles.

The Court noted that several lower courts had found that juveniles who were involuntarily incarcerated had a right to rehabilitative treatment. The Court characterized one basis for these decisions as the interpretation of the Supreme Court's decision in Jackson v. Indiana, 406 U.S. 715 (1972). Lower courts have reasoned that the state's authority over delinquent juveniles derives from its *parens patriae* interest in their welfare, indicating a beneficent purpose for confinement.

A second basis for lower court decisions characterized by the Supreme Court was the fact that the juvenile justice system denies certain due process safeguards, which have been found constitutional because the purpose of incarceration is rehabilitative, not punitive. The courts indicated that the compensating factor for denial of due process was thought to be the provision of rehabilitation.

In this decision, the Supreme Court found both reasonings questionable. The Court found that states may legitimately confine juveniles solely to protect society from them and suggested that even without treatment, removing a juvenile from a dangerous or unhealthy environment may be a legitimate exercise of the state's *parens patriae* authority.

The Court ruled that, while rehabilitative training is no doubt desirable and sound as a matter of policy, plaintiffs have no constitutional right to that training.

In the second issue, the Court was not willing to say that the isolation practices at the camps were unconstitutional. It noted that the Supreme Court had already determined that there is no simple test for determining whether conditions of confinement are cruel and unusual.

The Court indicated that a more important consideration in this instance was that the juvenile defendants, who have not been convicted of crimes, have a due process interest in freedom which entitles them to closer scrutiny of their conditions of confinement than that accorded to convicted criminals. The state acquires the right to punish an individual only after it has tried and convicted him as a criminal.

The Court remanded the case to the district court for consideration of whether the isolation employed at Mayaguez is reasonably related to any legitimate governmental objective. (Mayaguez Industrial School, Puerto Rico)

U.S. Appeals Court
CROWDING
REMEDIES
DOUBLE CELLING
TOTALITY OF
CONDITIONS

Union County Jail Inmates v. Di Buono, 713 F.2d 984 (1983), cert. denied, 104 S.Ct. 1600 (1983). Overcrowded conditions are found unconstitutional. Litigation challenging severe overcrowding at the Union County Jail in New Jersey resulted in a finding by a federal district court and its special master that the overcrowded conditions at the jail were unconstitutional. The most serious concern of the court was placement of inmates on mattresses on the floor of one man cells. Rejecting the state corrections commissioner's request to resolve the problem by double bunking, the district judge ordered the convicted inmates removed from the jail and into the state prison system to which they had been sentenced (537 F.Supp. 1009).

In reversing the district court's prohibition against double bunking, the Third Circuit Court of Appeals ruled that under the "totality of the circumstances," the double bunking proposal would satisfy the constitutional prohibitions against the punishment of pretrial detainees and against cruel and unusual punishment of sentenced prisoners.

In reaching its decision, the Third Circuit relied on Bell v. Wolfish, 441 U.S. 520 (1979), in which the Supreme Court held that while detainees may not be punished, there is no punishment where confinement conditions serve legitimate nonpunitive purposes and are not excessive in relation to those purposes. In addition, the court must inquire as to whether the conditions cause inmates to endure "genuine privations and hardship over an extended period of time."

Both courts concluded that overcrowding served two legitimate purposes: effective management of a detention facility during a statewide prison overcrowding emergency and the interests of state and local government in not releasing inmates into the streets. However, the circuit disagreed with the lower court's finding that conditions would still violate the due process rights of detainees because of sheer lack of space and because the totality of conditions would in any event be unconstitutional.

According to the appeals court, double bunking would resolve the "totality" issue by providing adequate space for sleeping and would allow for reclaiming large recreation areas, permitting each inmate one hour of exercise each day in the larger space. The circuit claimed that this recreation period would offset the "cramped and overcrowded conditions" of the remaining fifteen waking hours, during which square footage per inmate varies from thirty-one to thirty-three and one half square feet. The Circuit Court was further persuaded that such conditions were not unconstitutional because they were convinced that the majority of detainees are confined for no more than sixty days, an assertion disputed by some local parties. (Union County Jail, New Jersey)

1984

U.S. District Court
REMEDIES
DEFENSES

Alberti v. Heard, 600 F.Supp. 443 (S.D. Tex. 1984). Federal district court orders minimum staffing plan for Texas jail. After establishing the existence of constitutional violations, resulting in the lack of protection for prisoners housed at the Harris County Central Jail in Houston, the court ordered the sheriff to implement a new staffing plan requiring a minimum of two staff per quadrant and visual inspections at least every hour. The county had been previously ordered to correct the deficiencies at the jail, and the court did not accept their defense that there were no funds for additional staff.

The plaintiffs cited high levels of violence and sexual assaults at the jail as a result of the condition and design of the facility, inadequate supervision, unreliable communication systems and lack of staff. (Harris County Jail, Texas)

U.S. Appeals Court
CROWDING
REMEDIES
MEDICAL CARE

McElveen v. Prince William County, 725 F.2d 954 (4th Cir. 1984), cert. denied, 105 S.Ct. 88. \$210,000 is awarded to inmates held in jail. A federal jury awarded \$210,000 to approximately 7,000 inmates held in the Prince William County (Virginia) jail between August 1980 and January 1982. Two months before, the jury had found that the facility was unconstitutionally crowded, exceeding at times its inmate capacity by 400 percent. Witnesses had testified that the facility lacked medical care and security and was unsafe. Pretrial detainees are to receive \$170,000 of the award, with the remaining funds to be divided among the sentenced prisoners held at the jail.

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

U.S. District Court
POPULATION
BEDDING
MEDICAL CARE
REMEDIES

Monmouth County Correctional Institution Inmates v. Lanzaro, 595 F.Supp. 1417 (D. N.J. 1984). Federal court sets cap on New Jersey county jail population and orders relief for prisoners. After an extensive review of the conditions at the Monmouth County jail the U.S. District Court for the District of New Jersey has concluded that both pretrial and sentenced inmates are being denied constitutional rights. The court placed a cap on the population of the jail and ordered relief in the areas of physical conditions, bedding, recreation, medical care, classification and visiting. (Monmouth County Correctional Institution, New Jersey)

U.S. District Court
POPULATION
PRETRIAL
DETAINEES

Tyler v. United States, 602 F.Supp. 476 (E.D. Mo. 1984). Court praises city officials for reducing pretrial population. A U.S. district court noted that although the City of St. Louis initially violated its order to limit the number of prisoners housed in the city jail, subsequent actions purged the city of its contempt of court responsibility.

An earlier order set limits on the city jail capacity. When excess prisoners were housed at other facilities, the court stated that those facilities must also meet the constitutional conditions ordered for the city jail. The court noted that staff levels at the city jail were maintained at a time when other city agencies were reducing their force, and efforts to expedite processing of cases showed the willingness of the city to comply with the court order. As a result, the pretrial population was steadily decreased, as was reliance on other facilities to house overflow populations. (St. Louis City Jail, Missouri)

1985

State Supreme Court
REMEDIES
PRETRIAL
DETAINEES

Attorney General v. Sheriff of Suffolk County, 477 N.E.2d 361 (Mass. Sup. Jud. Ct. 1985). Facility plans are modified. In an earlier consent decree county officials had agreed to construct a new jail to house pretrial detainees in response to overcrowding. Subsequently a single justice approved modifications of the decree (ordering a seventeen story instead of a thirteen story facility). The Massachusetts Supreme Court found that the action of the single justice was appropriate and did not violate the principle of separation of power. (Suffolk County Jail, Massachusetts)

State Supreme Court
CROWDING

Cleveland v. Goin, 703 P.2d 204 (Ore. Sup. Ct., 1985). Prisoner ordered back to jail in county of trial. The plaintiff was transferred to a jail in another county because, according to the sheriff, his jail was overcrowded. After examining records and logs, the court determined that jail occupancy had not exceeded the limit set by federal court. As a result, the prisoner was ordered housed in the jail in which his upcoming trial would be held. (Clatsop County Jail, Oregon)

U.S. District Court
CONDITIONS
OVERCROWDING

Dohner v. McCarthy, 635 F.Supp. 408 (C.D.Cal. 1985). Inmates brought a class action suit against the director of California Department of Corrections and the prison superintendent to challenge the constitutionality of conditions of confinement, and some inmates moved for certification of subclasses. The district court held that: (1) conditions for certification of subclasses were not satisfied; (2) double-celling, overcrowding, medical care, sanitation, food, clothing, and safety did not violate the eighth amendment; and (3) no alleged liberty interest in medical and mental health treatment, entitlement to work credits, or visitation rights was violated. Cells housing two inmates, despite the design for one inmate which contained about eleven and one-half square feet per person when the extra bed was lowered, which required the inmates to crawl over beds to travel from one end of the cell to the other, but which were adequately cleaned and ventilated, which had windows, which had a desk and storage area, and which had noise within tolerable levels were not unfit for human habitation, and, thus, the cell itself satisfied the requirements of prohibition against cruel and unusual punishment.

The factors relevant in assessing pain inflicted by a minimally sized cell for the purposes of cruel and unusual punishment clause includes the following: characteristics of prison population; prison staff's morale; amount of time the inmate has to spend in the cell each day; opportunities available for activities outside the cell; and the ability of the prison staff to be flexible and responsive to individual needs and problems created by double-celling.

The amount of time that the inmates are able to spend away from the cells is a critical factor in determining whether conditions of confinement involve wanton and unnecessary infliction of pain in violation of the cruel and unusual punishment clause. The permanence of double-celling of inmates in cells designed for a single inmate is a factor to be considered together with the size of the cells and the opportunities for inmates to leave the cells during the normal routine of the prison life in determining whether double-celling constitutes cruel and unusual punishment. (California Men's Colony, California)

U.S. Appeals Court
DOUBLE BUNKING
CROWDING
REMEDIES

Duran v. Elrod, 760 F.2d 756 (7th Cir. 1985). Appeals court modifies consent order- allows double bunking of prisoners. In 1983 Cook County entered into a consent agreement concerning crowding and conditions of confinement at the jail. The agreement called for a halt to putting two prisoners in small (sixty-four square foot) cells in the facility. Later, the County asked for a modification of the order due to rapid growth in the jail population. The district court not only denied the request but placed a cap on the number of prisoners which could be housed. As a result, the county was ordered to release pretrial detainees in reverse order of the size of their bonds. The cap was affirmed by the Seventh Circuit Court of Appeals (713 F.2d 292).

A study which was completed by the county showed that many of the released detainees became fugitives or were rearrested for subsequent crimes. Based on the study, the county again sought relief from the district court; the motion was again denied. However, a majority of the Seventh Circuit Court of Appeals disagreed with the lower court and allowed double occupancy of the cells. The appeals court criticized the county for "foot-dragging" in its compliance efforts and for destroying its credibility with the lower court. The majority noted, however, that double bunking in sixty-four square foot cells is clearly constitutional. Denying the motion, they argued, would punish the citizens of the county rather than the governmental entity; the public interest in protection against the release of the accused criminals outweighs the inmates' expectations under the original consent decree. (Cook County Jail, Illinois)

U.S. Appeals Court
SANITATION
TOILETS
BEDDING
HEATING
FOOD
MEDICAL CARE

Goodson v. City of Atlanta, 763 F.2d 1381 (11th Cir. 1985). Detainee awarded \$50,000 damages for conditions of detention. The plaintiff was held as a rape suspect in the Atlanta jail. A jury concluded that he was subjected to unconstitutional conditions of confinement (sanitation, toilet facilities, medical care, lack of bedding, lack of heating, roach infested food). The jury believed that the city of Atlanta and the jail administrator knew of these conditions and had even made public statements to the media that the jail was "unfit for human habitation". Concluding that the administrator had failed to properly train and supervise staff, they held him liable for \$5,000 damages, and held the city liable for \$45,000 compensatory damages. (Atlanta City Jail, Georgia)

U.S. Appeals Court
PRETRIAL
DETAINEES

Hamm v. DeKalb County, 774 F.2d 1567 (11th Cir. 1985), cert. denied, 475 U.S. 1096. Eleventh circuit finds Wolfish statement inadequate for determining pretrial detainee conditions. The court asserted that the standard established in Bell v. Wolfish, 441 U.S. 520 (1979), does not produce a clear result when applied to a jail's provision of basic needs such as food, living space and medical care. The Wolfish test, developed for pretrial detainees in a federal detention center, asks if conditions are reasonable and related to a legitimate governmental objective, and whether conditions amount to "punishment." The court concluded that pretrial conditions be evaluated under the same standard that has been developed for eighth amendment analysis of conditions for convicted offenders

As many county and city jails hold both detainees and convicted prisoners, applying the two separate standards necessarily requires courts to become "...enmeshed in the minutia of prison operations," which the Supreme Court has warned against. Therefore, in addition to requiring pretrial conditions and practices to serve a legitimate governmental purpose, the court also held that jails must furnish the detainees with a reasonably adequate diet and living space, and with reference to medical needs that they must not be deliberately indifferent to detainee's serious medical needs. (DeKalb County Jail, Georgia)

U.S. Appeals Court
USE OF FORCE
CLOTHING
FOOD

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 court ruled that while the father and son were both incarcerated in the jail, they were improperly denied clothing and food provisions. Although requiring the pretrial detainees to wash and dry their own clothes was not unconstitutional, forcing them to remain partially unclothed while waiting for their clothes to finish laundering was improper. They were not provided enough calories as required for an adequate diet, resulting in weight loss and mildly diminished health. Each was awarded \$100.00. (Phelps County Jail, Missouri)

U.S. Appeals Court
CONDITIONS
CROWDING
SANITATION
VENTILATION
PLUMBING
LIGHT

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

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

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

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

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

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

Persons involuntarily confined by the state have a constitutional right to safe conditions of confinement. Safety hazards found throughout the state prison's occupational areas, which were exacerbated by prison's inadequate lighting and which seriously threatened the safety and security of the inmates, created unconstitutional infliction of pain. The failure to provide adequate cell cleaning supplies in light of overall squalor at the state prison violated the eighth amendment. (State Penitentiary, Washington)

U.S. District Court
CROWDING
REMEDIES

Inmates of Allegheny County Jail v. Wecht, 612 F. Supp. 874 (D.C. Pa. 1985). Use of police lockup to relieve jail crowding brings lockup under provisions of court order. Attempting to lower its jail population to meet a court ordered cap, officials transferred prisoners to a police lockup. The court found that housing female prisoners for several days (seventeen days in one instance) in a facility designed for only a few hours of detention, violated the court order. The court concluded that use of the lockup was an attempt by the county to avoid a court ordered choice between providing constitutionally adequate facilities or releasing prisoners and paying a fine for each one so released. The court decreed that once an inmate is judicially committed to jail he/she cannot be kept in the lockup for more than twelve hours. (Allegheny County Jail, Pennsylvania)

U.S. Appeals Court
REMEDIES

Madison County Jail Inmates v. Thompson, 773 F.2d 834 (7th Cir. 1985). Appeals court does not reinstate jury verdict for \$500,000 damages; nominal damages upheld. Having convinced a federal jury that conditions at the jail were substandard, they awarded damages of between ten to thirteen dollars per day to plaintiff prisoners in this class action suit. The award would have exceeded \$500,000. The trial court entered a judgment reducing the award to nominal damages. On appeal, the Seventh Circuit concurred with the jury finding of unconstitutional conditions, but concluded that "the plaintiffs failed to present evidence which would support a finding of consequential injury to the class as a whole." The majority refused to permit damages, citing the courts reluctance in Doe v. District of Columbia, 697 F.2d 1115 (CADC 1983), "to grant money damages to a class of prisoners in mass that includes many prisoners who are causing the conditions complained of and who will not cooperate to correct them." (Madison County Jail, Indiana)

U.S. District Court
CROWDING
PLUMBING
SANITATION
FOOD
FIRE SAFETY

Miles v. Bell, 621 F.Supp. 51 (D.C.Conn. 1985). The focus of this complaint was overcrowding, particularly in the housing unit, which once consisted of open dormitories. Pretrial detainees brought a class action suit primarily alleging that the overcrowded dorms increased the spread of disease among them and were psychologically harmful because of the stress, lack of control over their areas and lack of privacy. Most of the plaintiffs' proof on the issue was based on comparisons between illness rates in dormitories and other housing methods such as cubicles or single or double cells. Testimony did show higher levels of complaints and a higher level of illness among inmates housed in the open dorms. A doctor testified that the installation of cubicles could correct many of these problems. In fact, the defendants had corrected the situation by installing cubicles, rendering much of the pretrial detainees' complaint moot. The cubicles mitigate the spread of disease, as well as afford privacy, testified the doctor. He said that the decrease in stress would likely improve both the physical and mental states of the inmates. Although there was no testimony as to what effect the cubicles had on ventilation, the court found no violation on the matter. The barriers were likely to decrease the effects of smoking and body odor of other inmates. The inmates complained of drafts if windows were left open and of stifling heat if left closed. The living units made up of cubicles were not challenged by the inmates.

The court also found no constitutional violation in that the number of toilets and showers did not conform to the standards set by the American Correctional Association (ACA) and by the American Public Health Association (APHA). The ACA advised one toilet and shower facility for every eight inmates, and the APHA advised one toilet for every eight inmates and one shower for every fifteen inmates. The defendants provided one toilet for every ten to fifteen inmates, and one shower for every fourteen to twenty-four inmates, depending on the housing unit. These figures were nearly twice that advised. Still, the court found no violation absent a showing that waiting in line led to either physical or mental problems. Sanitary conditions were not challenged.

Although there were certain violations of the health code in the food service in that maggots and weevils were occasionally found, the court found no constitutional violation. With regards to recreational opportunities, the inmates had enough forms of exercise and equipment available regularly.

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

(Federal Correctional Institution at Danbury, Connecticut)

1986

U.S. Appeals Court
EQUAL
PROTECTION
PRETRIAL
DETAINEES

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

The U.S. Court of Appeals for the Third Circuit held that: (1) the district court properly denied the plaintiffs' motion to reopen the case and did not err in its directed verdict for the individual defendants on the plaintiffs' denial of equal protection claim; (2) the district court erred in dismissing the plaintiffs' fourth amendment claims on the

ground of collateral estoppel; (3) the city is responsible for the use of a bail schedule in violation of a rule of the New Jersey Supreme Court; (4) the conditions of confinement to which the non-disruptive, non-violent, non-alcoholic women were subjected constituted privation and punishment in violation of the fourteenth amendment; and (5) the city may be held liable under Monell for the conditions of confinement, even if the practices with respect to jail conditions were followed without formal city action, because it appears that they were the norm and had become acceptable standard and practice for the City. (City of Wildwood, New Jersey)

U.S. District Court
EQUAL
PROTECTION
CONDITIONS

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 non-program 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, since 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. District Court
CROWDING
REMEDIES

Inmates of Occoquan v. Barry, 650 F.Supp. 619 (D.D.C. 1986). A class of inmates confined at state medium security facilities brought a federal civil rights action seeking declaratory and injunctive relief for deprivation under color of state law of fifth and eighth amendment rights. The district court held that overcrowding and systemically deficient conditions constituted cruel and unusual punishment justifying equitable relief.

Overcrowding and systemically deficient conditions at state medium security institutions constituted cruel and unusual punishment in violation of the eighth amendment justifying equitable relief of imposition of cap on a number of inmates at each facility and requirement of periodic reports indicating what steps were being taken to address deficiencies. The court ruled:

"Accordingly, the Court will order that by June 1, 1987, the population of Occoquan I, II, and III shall not exceed a total of 1,281 inmates, with specific caps set for each dormitory. This total is based on a formula providing each inmate a total of 95 square feet of floor space for sleeping and day room purposes. If defendants provide all inmates with opportunities for work, vocational education or other meaningful programs to eliminate enforced idleness among the inmates, the Court will entertain a motion to modify the square footage formula to 85 square feet per prisoner. In connection with the establishment of a population cap at Occoquan, the Court will also order the defendants to provide the Court with a written report by January 15, 1987, indicating precisely how they propose to comply with the population cap."

The plaintiffs contend that an excessive inmate population, deficiencies in environmental health and safety, food services, and mental health care, alone or in combination, violate their rights guaranteed by the United States Constitution.

The classification of inmates is essential for the prison security. One critical function of classification is the efficient identification of violent, aggressive inmates and those in need of psychiatric care, so that they can be separated from the rest of the population. See, e.g., Palmigiano v. Garrahy, 443 F.Supp. 956 (D.R.I.1977). The classification system at Occoquan appears to be dangerously overtaxed by the crush of inmates in need of classification.

Idleness among inmates results in a variety of problems, including heightened tension, frustration, and violence. The lack of adequate programs can also have an adverse impact on inmates' chances for parole. There was no disagreement among the expert penologists that inmates should be engaged in some productive enterprise, properly supervised. Nonetheless, enforced idleness presents a major problem at Occoquan.

The correctional officers do not supervise properly the sleeping areas of the dormitories. Correctional officers do not make patrols on a frequent and regular basis, nor are officers stationed in the rear of each dormitory so as to facilitate supervision of the living area when inmates are present.

Medical services experts agreed that deficiencies in the medical care delivery system at Occoquan exist which are likely to cause harm to the inmates. These deficiencies are systemic in nature, concerning staffing, facilities, and procedures. (Lorton Correctional Complex, District of Columbia)

U.S. District Court
CONDITIONS
VENTILATION
LIGHT

Jackson v. Gardner, 639 F.Supp. 1005 (E.D.Tenn. 1986). Inmates of a county jail brought a Section 1983 action challenging the constitutionality of conditions of confinement. After resolution of some of the conditions complained of, and stipulation as to others, the district court held that: (1) Prison conditions under which an average inmate was confined twenty-four hours a day in a physically dilapidated, insect infested, dimly lit, poorly ventilated area averaging under twenty square feet per

inmate, without any available recreation or diversion other than some reading or letter writing, sharing a shower which might not have hot water with twelve to fourteen others, sharing a sink and toilet with three or four others, and possibly sleeping on an unsanitary floor, or within inches of a toilet, in clothing which may not have been recently washed, constituted cruel and unusual punishment; (2) In order for the county jail to provide constitutionally acceptable confinement, population at the main jail facility had to be reduced, regular out-of-cell recreation had to be provided, visitation increased, and fire escape plans had to be communicated to inmates and prominently displayed in corridors at all times. (Sullivan County Jail, Tennessee)

U.S. District Court
REMEDIES

Jackson v. Whitman, 642 F.Supp. 816 (W.D. La. 1986). A sheriff, a police jury and the State of Louisiana were in contempt of court for failing to comply with a consent decree which outlined remedial actions to be taken to rectify unconstitutional conditions at a parish jail. Numerous violations of the consent decree warranted fines of \$7500 against the sheriff, \$2500 against the police jury, and \$2500 against the state, and fines of \$1000 for any additional days that any defendant was not in substantial compliance with the court's orders. (Bienville Parish Jail, Louisiana)

U.S. District Court
HYGIENE
SANITATION
FIRE SAFETY
MEDICAL CARE

McClung v. Camp County, Tex., 627 F.Supp. 528 (E.D. Tex. 1986). District court rules against all prisoner claims in conditions of confinement suit against jail.

An inmate who had been incarcerated in a county jail brought action against the county and various county officials alleging that conditions in jail violated his constitutional rights. The federal district court held that: (1) evidence supported a finding that conditions placed on the inmate's physical exercise at the jail did not constitute a violation of inmate's constitutional rights; (2) evidence supported a finding that inmate's constitutional rights were not violated by alleged failure to provide clean bedding, clothing and toiletries; (3) evidence was sufficient to support a finding that jail fire safety conditions did not violate inmate's constitutional rights; and (4) administering insulin to a diabetic inmate three times daily rather than four times daily did not violate the inmate's rights.

Evidence that county jail cells had enough room for inmates to exercise, and that the inmate's health had not suffered during short periods he was confined in the jail supported the court's finding that conditions did not constitute a violation of inmate's constitutional rights.

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

U.S. District Court
CROWDING
CONDITIONS
REMEDIES

Palmigiano v. Garrahy, 639 F.Supp. 244 (D.R.I. 1986). Prison officials requested modification of a 1977 order which found that the prison conditions violated the eighth amendment. The district court held that: (1) subsequent United States Supreme Court decisions did not affect validity of a 1977 order finding unconstitutional prison conditions, and, thus, the 1977 order remained law of case, and (2) the totality of present prison conditions violated the eighth amendment. Request denied.

The district court's 1977 unappealed order which found violation of the eighth amendment based on totality of conditions in the prison that included overcrowding, idleness, inadequate environmental support system, and inadequate medical and mental health care remained consistent with subsequent decisions of the United States Supreme Court and, therefore, remained the law of the case requiring prison officials' compliance. Totality of the conditions at the prison which included overcrowding, prolonged confinement, inadequate medical and mental health care, and overextended staff affected basic health and safety of inmates, constituted cruel and unusual punishment in violation of the eighth amendment, and, therefore, did not justify reconsideration of the district court's 1977 order finding an eighth amendment violation despite some cleaning in prison. Palmigiano v. Garrahy, 443 F.Supp. 956; No Appeal was taken. (Adult Correctional Institution, Rhode Island)

U.S. Appeals Court
SEGREGATION
CROWDING

Reece v. Gragg, 650 F.Supp. 1297 (10th Cir. 1986). A pretrial detainee representing a class of all present and future pretrial detainees and sentenced inmates held in the county jail brought action seeking injunctive relief to require that operation of the jail under present conditions cease. The district court held that: (1) the current operation and condition of the county jail violated the due process clause of the fifth and fourteenth amendments and the eighth amendment's prohibition against cruel and unusual punishment, and (2) due to unconstitutional conditions at the jail, an injunction was warranted, but would be stayed under conditions outlined by court.

To the extent that the county jail is unable to segregate pretrial detainees and sentenced inmates, the higher standard applicable under the due process clause, rather than the eighth amendment, must be met by the entire facility.

Jail overcrowding for the purpose of allowing the county to house more inmates without creating more jail space is an impermissible justification for resulting violations of due process and prohibition against cruel and unusual punishment. Severe

overcrowding combined with lack of area for exercise, lack of separate dining area, inadequate ventilation, inadequate temperature control, and antiquated and unsanitary plumbing at the county jail violated due process clauses of the fifth and fourteenth amendments and ran afoul of the eighth amendment's proscription against cruel and unusual punishment. (Sedgwick County Jail, Kansas)

U.S. Appeals Court
CONDITIONS
LIGHTS
CLASSIFICATION

Shelby County Jail Inmates v. Westlake, 798 F.2d 1085 (7th Cir. 1986). Conditions of the Shelby County Jail in Indiana did not violate the constitutional rights of inmates, says a U.S. Appeals Court. Inmates at the Shelby County Jail (SCJ) filed a suit alleging that the totality of conditions and practices at SCJ violated their constitutional rights. The inmates claimed the jail's twenty footcandles of illumination did not meet minimum standards. The county's expert, however, took readings in the courtroom which revealed eighteen footcandles at the judge's bench.

The inmates complained that they did not have any meaningful opportunity for outdoor exercise or activities. The county testified the inmates were allowed to play cards and board games, read books, ride exercise bikes, and were provided with American Medical Association booklets on indoor exercise.

The inmates contended that SCJ's classification system failed to adequately segregate pretrial and convicted prisoners, males and females, and juveniles and adults. The county rebutted. The inmates also alleged that inmates with emotional and medical problems were not segregated from the general population. The county testified otherwise, maintaining that incoming inmates were screened, and serious medical and emotional conditions were sent to the county hospital or mental health center.

The appeals court determined that the county presented sufficient evidence to support a finding that none of the conditions amounted to constitutional violations. (Shelby County Jail, Indiana)

U.S. District Court
CROWDING
PROGRAMS

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

U. S. District Court
REMEDIES

Ruiz v. McCotter, 661 F.Supp. 112 (S.D.Tex. 1986). The Texas Department of Corrections was in contempt of court for failure to afford sufficient single-occupancy cells, in failing to assign housing to prisoners according to their respective custody classifications, in failing to maintain a specified number of personnel, and to deploy staff in the housing areas, in failing to employ a substantial number of health care professionals, in failing to meet the needs of the physically handicapped, in failing to afford prisoners in administrative segregation appropriate housing facilities, and in failing to build and properly equip recreation yards and gymnasiums. On the whole, the court found, TDC had been habitually and inexcusably dilatory in complying with the orders in question. The court noted that contempt represents more than delay in performance or lack of perfection; it is, instead, failure to accomplish what was ordered in meaningful respects. Defendants may defeat finding of contempt by demonstrating that they employed, in good faith, utmost diligence in discharging their responsibilities. Prison inmates were not required to show that Texas Department of Corrections had violated the Eighth Amendment or to develop a method by which the Department could achieve compliance with consent decree in order to support a finding of contempt for violating the decree; rather, inmates were required to establish by clear and convincing

evidence that the Department had inappropriately mixed custody classifications or had housed prisoners not in minimum custody status in dormitories, and had done both, in violation of stipulations forming bases for district court orders. Motions to modify so as to alleviate or eliminate conditions or restrictions imposed by prior court order require a clear showing of grievous wrong evoked by new and unforeseen conditions. Texas Department of Corrections' alleged change in philosophy to a belief that dormitories provide adequate, secure housing for women prisoners in medium and close custody classifications was not sufficient to require modification of stipulations incorporated in court orders requiring inmates to be housed with inmates of like classification, in light of the fact that certain women inmates had been moved to cell housing, and conflicting testimony regarding appropriateness of dormitory housing for women requiring medium or close custody. (Texas Department of Corrections)

1987

U.S. Appeals Court
CROWDING

Akao v. Shimoda, 832 F.2d 119 (9th Cir. 1987), cert. denied, 108 S.Ct. 1301. A Federal lawsuit alleging overcrowding was brought by three prisoners in Hawaii. Finding no eighth amendment violation, the lawsuit was dismissed by the district court. The decision was reversed by the U.S. Court of Appeals, which concurred that an allegation of overcrowding without additional cruel and unusual treatment does not state a claim. However, it found these prisoners had alleged more. The prisoners claimed that because of the increased population, there was "an increase in stress, tension, communicable diseases, and a high increase in confrontations between inmates." (Oahu Community Correctional Center, Hawaii)

U.S. Appeals Court
SEGREGATION

Bailey v. Shillinger, 828 F.2d 651 (10th Cir. 1987). After his voluntary transfer to a prison in another state, a Wyoming state prisoner who was serving a sentence for first degree murder murdered another prisoner and was returned to the Wyoming State Prison. The warden assigned him to a maximum security unit without a formal hearing. The prisoner filed a civil rights lawsuit against the warden, alleging his due process rights had been violated. He also charged that he was subjected to cruel and unusual punishment by being deprived of exercise and fresh air. The appeals court concluded that, because of the danger the inmate presented to other inmates and staff, the court concluded the warden was correct in assigning the inmate to maximum security. As to the cruel and unusual treatment charge, the court concluded that the one hour per day of exercise and fresh air was "restrictive" but did not violate the Eighth Amendment. (Wyoming State Prison)

U.S. District Court
SMOKE

Beeson v. Johnson, 668 F.Supp. 498 (E.D.N.C. 1987). A federal district court declined to hold that an inmate has a constitutional right to be housed in a smoke-free environment, but allowed his Federal Civil Rights lawsuit alleging that smoke aggravated his medical problems to proceed. (Central Prison, North Carolina)

U.S. District Court
REMEDIES
CROWDING

Benjamin v. Malcolm, 659 F.Supp. 1006 (S.D.N.Y. 1987). Temporary relief was granted to New York City correctional facilities to allow them to cope with the recent increase in population. However, "no further requests for modification will be granted regardless of foreseeable or unforeseeable problems which may arise." (Brooklyn House of Detention for Men and Queens House of Detention for Men)

U.S. Appeals Court
CROWDING
CELL CAPACITY

Cody v. Hillard, 830 F.2d 912 (8th Cir. 1987), cert. denied, 108 S.Ct. 1078. An inmate brought a class action under a civil rights statute complaining of overcrowding and substandard living conditions. The United States District Court for the District of South Dakota ordered an end to the practice of double-celling of inmates. Prison officials appealed. The Court of Appeals initially affirmed (799 F.2d 447). After granting a petition for rehearing en banc, the U.S. Court of Appeals, Eighth Circuit, held that the practice of double-celling did not evince the "wanton and unnecessary infliction of pain" necessary to constitute a violation of the Eighth Amendment. On appeal, prison officials contended that the trial court erred in finding that double-celling of inmates at the South Dakota State Prison (SDSP) violates the eighth and fourteenth amendments to the United State Constitution. They also claimed that the district court erred in using the "rated capacities" of the American Corrections Association (ACA) as a reference for measuring the permissible capacity of the prison under the eighth amendment. The appeals court reversed the district court's order with respect to double-celling, ruling that "...the record in this case falls far short of supporting the district court's conclusion that the line drawn by Rhodes has been crossed by double-celling at SDSP. Accordingly, there is no constitutional basis for the district court's remedial order with respect to double-celling." The court also noted that "We have found nothing in the record or the District Court's findings of fact to persuade us that our conclusions regarding double-celling generally should be different with regard to the protective custody area of the prison." (South Dakota State Penitentiary)

U.S. District Court
USE OF FORCE

Collins v. Ward, 652 F.Supp. 500 (S.D. N.Y. 1987). The district court held that a situation with which prison officials and employees by reason of threat posed to safety of staff and inmates, were justified in using tear gas to regain control over the inmate and free the other inmates held hostage without violating prohibition against cruel and unusual punishment. Officials were faced with an inmate, armed with bottles, scissors, a wrench and a mop wringer, who held a group of ailing inmates hostage in a prison hospital and threatened to kill any member of the prison staff who attempted to enter. Conditions of confinement, being part of the penalty that criminal offenders pay for their offenses against society, may constitute cruel and unusual punishment regardless of whether there is an express intent to inflict unnecessary pain. Conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for prisoner's interest or safety in order to constitute cruel and unusual punishment.

Standards of obduracy and wantonness, not inadvertence or error in good faith, apply for determining cruel and unusual punishment whether conduct occurs in connection with establishing conditions of confinement, supplying medical needs, or restoring official control over a tumultuous cellblock.

The fact that alternative methods, other than tear gas, were available to subdue riotous prisoners did not mean that use of tear gas constituted cruel and unusual punishment when prison officials and employees otherwise acted in good faith and employed special precautions to minimize harmful effects of tear gas upon innocent bystanders. (Green Haven Correctional Facility, New York)

U.S. District Court
CELLS

Feliciano v. Colon, 672 F.Supp. 627 (D. P.R. 1987). An order that would give inmates 35 square feet of living space was refused modification by a federal court. Issued eight years ago in Feliciano v. Barcelo, 497 F.Supp. 14 (D. P.R. 1980), was an order requiring that each inmate be provided with at least 35 square feet of living space. A federal court denied Puerto Rican prison authorities' request that it modify this order. Refusing to accept the argument that all persons presently incarcerated would present a danger to the community if released, the court stated that prison authorities had failed to explore alternatives which might include the transfer of inmates to federal prisons, temporary housing, or halfway houses. Since prison authorities did not notify the court of predictable problems in compliance when the inmate population had increased faster than earlier estimates and it became clear the estimates were too low, this did not justify modification of the order. (Puerto Rico System)

U.S. District Court
FOOD

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

U.S. Appeals Court
CROWDING
SANITATION
HYGIENE
LIGHT
VENTILATION

Gillespie v. Crawford, 833 F.2d 47 (5th Cir. 1987). Two Texas inmates filed a federal civil rights lawsuit when they contracted tuberculosis after allegedly being housed in crowded and unhealthy conditions, which included inadequate ventilation and lighting, and dirt and insect infestation. The inmates stated that they had repeatedly complained about these conditions, but that no corrective action was taken. The district court dismissed the lawsuit as "frivolous;" on appeal, the dismissal was overturned. According to the appeals court, that intent is not an element of a cause of action for eighth amendment claims alleging unconstitutional conditions of confinement. "Prison conditions," the court said, "may violate the eighth amendment even if they are not imposed maliciously or with the conscious desire to inflict gratuitous pain." The court also refused to bar the inmate's claim on the basis that a special master appointed in an earlier case, Ruiz v. Estelle, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983), was monitoring the correction of prison conditions found in that suit to violate the eighth amendment. (Texas Department of Corrections)

U.S. District Court
ISOLATION
MEDICAL CARE

Judd v. Packard, 669 F.Supp. 741 (D.Md. 1987). After noticing that an inmate suffered from various illnesses and weight loss, prison officials put him in medical isolation on three separate occasions for testing, diagnostic and treatment purposes, including testing for exposure to AIDS. After testing positive for the HTLV-III antibody present in those exposed to AIDS, the inmate filed a federal lawsuit claiming that each placing of him in isolation was an act of discrimination on the basis of a handicap, i.e., a positive HTLV-III test, and consequently, a violation of his civil rights. The federal district court found that there was no claim under the Rehabilitation Act of 1973, 29 U.S.C. Sec. 794, because the inmate had not alleged any "nexus" between the allegedly discriminatory conduct of the defendant prison officials and a specific program receiving federal funding. The court also that, even assuming that testing positive for HTLV-III

constituted a handicap, discrimination against handicapped individuals "is not invidious discrimination, and thus, it is not subject to strict or heightened judicial scrutiny." Therefore, the court found that the correct test to be applied was whether the prison's actions had a legitimate purpose and whether it was rational to believe that the treatment afforded the individual would promote that purpose. (Mayo Correctional Institution, Maryland)

U.S. District Court
ODORS
SANITATION

McBride v. Illinois Dept. of Corrections, 677 F.Supp. 537 (N.D. Ill. 1987). An appeals court ruled that prison conditions that are harsh or cause discomfort do not necessarily violate the Eight Amendment. Odors in the correctional facility, including odors from cellmate, odors from toilet, and odors from spray used to control roach infestation, did not constitute constitutionally prohibited cruel and unusual punishment. The plaintiff challenged his conditions of confinement in a civil rights complaint. The court also ruled that a lack of rehabilitative programs did not give rise to an actionable civil rights claim. (Stateville Correctional Center, Illinois)

U.S. District Court
CELLS
CROWDING
REMEDIES

Morales Feliciano v. Hernandez Colon, 672 F.Supp. 627 (D. Puerto Rico 1987). Puerto Rican prison authorities moved to modify stipulation and an order that they provide each prisoner with at least 35 square feet of living space. The district court held that: (1) prison authorities were not entitled to relief under subsection of federal rule allowing modification on the ground that changed circumstances would make further compliance with order unjust; (2) prison authorities failed to show that compliance would result in pernicious consequences, and failed to show changed circumstances warranting relief; and (3) building project undertaken to increase dramatically available beds for housing did not entitle prison authorities to relief. The possible release of prisoners by Puerto Rican prison authorities as a result of compliance with a court order that they provide each prisoner with at least 35 square feet of living space was not a "pernicious consequence" of compliance and did not entitle them to relief from order under Rule 60(b)(6); there was little factual support for assertion that all persons presently incarcerated in Puerto Rico would present danger to the community if released, argument had an undertone of disingenuity, and compliance would not interfere with efforts of Commonwealth as to enforcement of criminal law or any other policy decision of that entity. The court ruled that prison authorities should have known that the population projection figure on which they relied was, in all probability, inaccurate, and, even if they did not properly assess information available at that time, they certainly knew by the end of 1986 that they had drastically underestimated the actual rate of growth, but did not make the motion for relief from the stipulation, informally apprise the court of predictable problems in compliance, solicit assistance of monitor or seek discussions with plaintiffs' counsel. (Puerto Rico System)

U.S. District Court
SANITATION
PLUMBING
TOILETS

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

U.S. District Court
CROWDING
REMEDIES

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, Kentucky)

U.S. Appeals Court
DOUBLE CELLING
SEGREGATION

Tyler v. Black, 811 F.2d 424 (8th Cir. 1987), cert. denied, 109 S.Ct. 1760. On appeal, a federal court held that: (1) the mass transfer of inmate to a segregation unit during a period of prison unrest did not violate due process, but (2) double celling of inmates in small cells with solid "boxcar" type doors was cruel and unusual punishment in violation of Eighth Amendment. The mass transfer of inmates to a segregation unit during a period of prison unrest did not violate due process, where inmates were given posttransfer hearings, the warden perceived move as a necessary emergency security

measure, no punitive purpose was involved, and the transfers were purely temporary administrative segregations. However, double celling of inmates in segregation unit in small cells with solid "boxcar" type doors was cruel and unusual punishment in violation of the Eighth Amendment; inmates with history of assaultive behavior were placed in closed cells for up to 23 hours a day for a period of several months. (Missouri State Penitentiary, Special Management Facility)

1988

U.S. District Court
CROWDING
REMEDIES
PRETRIAL
DETAINEES

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

U.S. District Court
CHALLENGES

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

U.S. District Court
BEDS
CROWDING

Castillo v. Bowles, 687 F.Supp. 277 (N.D.Tex. 1988). A jail inmate brought an action against the county sheriff and deputy for a violation of his civil rights. The district court found that the fact that the inmate was temporarily forced to sleep on the jail floor due to overcrowding did not give rise to a violation of his constitutional rights. The court noted that the necessity of sleeping on the floor was the only injury the plaintiff claimed was caused by the overcrowding. The court found that "these claims are not cognizable under" 42 U.S.C.A. Section 1983 since the "United States Constitution does not require that prisoners be provided an elevated bed," citing Mann v. Smith, 796 F.2d 79, 85 (5th Cir. 1986). (Dallas County Jail, Texas)

U.S. Appeals Court
OUT-OF-CELL TIME
HYGIENE
EXERCISE
SHOWERS

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

U.S. Appeals Court
CHALLENGES

Gladson v. Rice, 862 F.2d 711 (8th Cir. 1988). A prisoner brought a Section 1983 action to challenge his temporary confinement, in a county jail, apart from the general inmate population during his ten-day transfer from a state penitentiary in connection with post-conviction proceedings on his behalf. The U.S. District Court granted

summary judgment in favor of the county sheriff and members of the jail staff, and the inmate appealed. The appeals court affirmed the lower court decision, finding that the prisoner's due process rights were not violated by the confinement. Prison officials received information from the penitentiary personnel that the prisoner was considered an escape risk who had a potential for violence, and there was no appreciable difference between the prisoner's basic status and living conditions in the penitentiary and those in the jail to which he was temporarily assigned. The court also found that the prisoner's constitutional guarantee against cruel and unusual punishment was not violated by the county prison's denial to him of unlimited access to certain amenities and privileges such as radio, television, telephone, showers, visitors, exercise, and cigarettes. The jail officials evaluated the prisoner's potential threat to the jail security in light of the information received from the correctional officials at the state penitentiary, and they provided the prisoner with a substantial equivalent of his penitentiary living arrangement. (Polk County Jail, Iowa)

U.S. District Court
HYGIENE
SANITATION
SEGREGATION

Harris v. Fleming, 839 F.2d 1232 (7th Cir. 1988), affirmed, 993 F.2d 1549. An inmate filed a federal civil rights lawsuit against three prison officials, claiming he had been subjected to cruel and unusual punishment seeking \$320,000 in compensatory and punitive damages. The inmate stated that the prison failed to supply him with toilet paper for five days, or with soap, toothpaste or a toothbrush for ten days and he was kept in a "filthy" roach-infested cell. He also complained that during 28 days in a segregation unit he was refused permission to exercise. Since the inmate suffered no physical harm, but merely some unpleasantness, the federal appeals court found that the defendants' temporary neglect of the prisoner was not intentional and that it did not reach unconstitutional proportions. While the court found that the circumstances of the case demonstrated some neglect and indifference on the prison's part, it concluded that the conditions were temporary and affected only one inmate. Although the inmate was deprived of "yard or recreation time," he could have "improvised temporarily with jogging in place, aerobics, or pushups." (Menard Correctional Center, Illinois)

U.S. District Court
DOUBLE CELLING
CLASSIFICATION

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

U.S. District Court
CAPACITY
TOTALITY OF
CONDITIONS

Inmates of the Allegheny County Jail v. Wecht, 699 F.Supp. 1137 (W.D. Pa. 1988). Prison inmates sued county and state officials to relieve the overcrowding at the county jail. The district court found that conditions at the jail including overcrowding, deplorable mental health facilities, fire hazards and the lack of reliable climate control rendered the jail constitutionally inadequate. The Commonwealth was partially responsible for the conditions and would be required to shoulder partial responsibility of remedial measures; and the jail would be closed and a new facility was required to be constructed. (Allegheny County Jail, Pittsburgh, Pennsylvania)

U.S. District Court
CELLS
CRUEL AND
UNUSUAL
PUNISHMENT

Johnson v. Commissioner of Correctional Services, 699 F.Supp. 1071 (S.D.N.Y. 1988). An inmate filed a Section 1983 action against the correctional facility, superintendent, Commissioner of Correctional Services, and corrections officers to recover damages for an alleged eighth amendment violation arising from the confinement in a cell with an inoperable sink for nine days. The sink

became inoperable after officers performed a "cell frisk" of the plaintiff's cell. The officers removed a number of things considered contraband and weapons and at the same time also took a nine inch plastic push rod from the sink in the cell. The rod was removed from the sink because in the past, inmates had successfully fashioned it into a weapon. It was impossible to obtain water from the sink without the rod. The inmate remained in the cell for nine days before being moved. The inmate alleged that he had no water from his sink nor water from any other source, other than a bucket of water he obtained while showering. But he did receive a beverage with each meal. He claimed that the lack of water caused him to become dehydrated and aggravated his migraine headaches because he was unable to take medication without ready access to water. The district court found that the confinement was not "cruel and unusual punishment"; the inmate received beverages with meals and obtained a bucket of water at one point during the confinement, and once dehydration was confirmed by the correctional facility's nurse, the inmate was removed to another cell. The court also found that the doctrine of qualified immunity barred the inmate's claim. The Commissioner was entitled to summary judgment on the grounds of a lack of personal involvement; and fact questions, as to whether the superintendent knew of the alleged violation but did nothing, precluded a summary judgment for the superintendent on the grounds of a lack of personal involvement. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
CROWDING
CELL CAPACITY

Lyons v. Powell, 838 F.2d 28 (1st Cir. 1988). A pretrial detainee brought action alleging violation of his civil rights. The federal district court dismissed complaint for failure to state cause of action, and appeal was taken. The appeals court held that the pretrial detainee's allegations that he was confined to a cell for 22-23 hours per day for a 27-day period, and was forced to sleep on a floor mattress, were sufficient to state a Section 1983 cause of action on ground of deprivation of liberty without due process. The court was troubled by the inmate's contention that he was confined to a cell for 27 days with another inmate, during which time he was forced to sleep on a mattress on the floor of the cell, and his claims that the mattress nearly covered the floor of his cell, and placed appellant in a position which was in close proximity to the open toilet in the cell. According to the court, the U.S. Supreme Court has held that "double-bunking," that is, placing two inmates in a cell presumably intended for a single inmate, does not constitute punishment. This practice, then, does not constitute a per se violation of a pretrial detainee's due process rights. Bell v. Wolfish, supra, 441 U.S. at 541, 99 S.Ct. at 1875. The Court left open the possibility, however, that "confining a given number of people in a given amount of space in such a manner as to cause them to endure genuine privations and hardship over an extended period of time might raise serious questions under the Due Process Clause as to whether those conditions amounted to punishment..." Id. at 542, 99 S.Ct. at 1875-1876. In Lareau v. Manson, 651 F.2d 96 (2d Cir. 1981), the Second Circuit held that double-bunking of pretrial detainees was constitutionally permissible for a period of no more than 15 days, but that the use of a floor mattress constituted punishment "without regard to the number of days for which a prisoner is so confined." According to the court, "Based on the foregoing considerations, we conclude that the district court incorrectly dismissed appellant's complaint for failure to state a cause of action." The court ruled, however, that the pretrial detainee was not denied access to court; detainee was given periodic access to a law library, and was not constitutionally entitled to also receive assistance from "persons trained in the law." (New Hampshire State Prison)

U.S. Appeals Court
DOUBLE CELLING
CELL CAPACITY

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

U.S. Appeals Court
REMEDIES

Rowland v. U.S. Dist. Court for N.D. of Cal., 849 F.2d 380 (9th Cir. 1988). Prisoners brought a lawsuit seeking to correct prison conditions. The federal district court issued a permanent injunction and ordered a monitor to inspect the new prison. Prison officials sought a writ of mandamus to vacate the order. The appeals court held that the district court was without jurisdiction to authorize a monitor to inspect new prison

because the facility was not covered by its permanent injunction correcting various facility-specific unconstitutional conditions at the old facility. To establish whether violations existed at the new facility, a new lawsuit must be brought. The court noted that removing segregated prisoners from the old facility was one way for prison officials to satisfy the purpose behind the injunction by removing prisoners from the facility that was found to be old, overcrowded and dirty and could not have been to subvert or undermine the permanent injunction. (New Folsom Prison, California)

U.S. Appeals Court
CAPACITY
CROWDING
REMEDIES

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

U.S. Appeals Court
CROWDING

Williams v. Willits, 853 F.2d 586 (8th Cir. 1988). A prisoner brought civil rights action against guards and prison supervisors. A federal appeals court held that: (1) the complaint did not allege any nexus between alleged overcrowding in prison and a fight between prisoner and inmate, and (2) prison guards did not violate a prisoner's civil rights by failing to break up a fight between him and another inmate where they determined that any effort to intervene would increase the risk because the guards were outnumbered by the inmates in the prison yard where the fight took place. To prove a supervisory liability claim in a civil rights action, a prison inmate was required to demonstrate that prisoners faced a pervasive and unreasonable risk of harm from some specified source and that the supervisor's corrective inaction amounted to deliberate indifference or tacit authorization; a single incident, or isolated incidents, would not ordinarily satisfy that burden. A prison inmate's allegation that a prison guard stood by and watched while he and another inmate engaged in a fight did not state grounds for holding prisoner supervisors liable for any violation of civil rights. (Iowa State Penitentiary)

1989

U.S. District Court
CONDITIONS OF
CONFINEMENT
REMEDIES
DORMITORIES
CAPACITY

Benjamin v. Koehler, 710 F.Supp. 91 (S.D.N.Y. 1989). New York City sought modification of a court order imposing limitations on the number of inmates who could be housed in a dormitory and the square footage which could be afforded to each inmate for living purposes. The federal district court ruled that the city was not entitled to modify because an increase in population was not unforeseeable and modifications were not constitutionally acceptable. According to the court, the evaluation of the application is governed by two criteria. First, did the increase in arrests as a result of the "crack" epidemic constitute a new and unforeseeable condition adequate to warrant modification of the decrees or does the city itself bear the responsibility for failing to foresee the overcrowding crisis that exists now? Second, are the defendants' requested modifications, each of which must be examined independently, constitutionally acceptable or are they in derogation of the primary goal of the decrees to ensure constitutionally minimal conditions for detainees? The court stated,

"The denial of the city's application should not be construed as minimizing the problem which the city faces but rather as a determination that the problem cannot again be solved at the expense of the people held in custody. The emergency which the city faces does not, for example, authorize the holding of 75 male prisoners in a receiving room with one toilet, insufficient benches and chairs, and often without mattresses to sleep on, for as much as two to three days. The problem will not be solved by requiring prisoners to live within forty square feet for two weeks. The time has come for the city to accept the fact that the court cannot consciously produce a solution to its chronically recurring problem. The city must accept the responsibility for dealing with the increase in the population." (Queens House of Detention for Men, Brooklyn House of Detention for Men, New York)

U.S. Appeals Court
FIRE SAFETY

Berry v. Peterson, 887 F.2d 635 (5th Cir. 1989). An inmate who was injured in a fire at the county jail brought a suit against the county, county board of supervisors, and the sheriff. The district court entered judgment in favor of the inmate and awarded

him \$200,000. The appeals court reversed the award after finding that the inmate who was injured in the fire "voluntarily" executed a covenant-not-to-sue, notwithstanding the attorney's alleged failure to adequately explain that the inmate thereby waived any claims against the county. The covenant-not-to-sue was not against public interest and could be enforced by the county. The court stated that the enforceability of the inmate's covenant-not-to-sue for injuries sustained during the fire was one of law for the court. The only issue which was even arguably suitable for the jury was the voluntariness of the agreement. (Hancock County Jail, Bay St. Louis, Mississippi)

U.S. District Court
CLOTHING
HYGIENE
SANITATION

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
STAFFING

Birrell v. Brown, 867 F.2d 956 (6th Cir. 1989). An inmate at the Michigan State Prison brought a civil rights action challenging the conditions of his confinement. The director of the state prison system and the superintendent of the prison moved for a summary judgment on the basis of qualified immunity. The district court denied the motion. On appeal, the court found that the officials' reliance on the district court's permission of enlargement of time for them to file a motion for reconsideration of its order excused the failure to file notice of appeal in a timely fashion and the officials were protected by qualified immunity. The court noted that a professional, sued in his individual capacity, will not be liable for damages if he was "unable to satisfy his normal professional standards because of budgetary restraints." The director of the Michigan prison system and the superintendent of the correctional facility were protected by qualified immunity from the inmate's civil rights action challenging allegedly inhumane conditions of confinement, including the understaffing of the institution and housing prisoners before desired or planned renovations at the facility could be completed. (Michigan's Western Wayne Correctional Facility)

U.S. District Court
VENTILATION
MEDICAL CARE
FACILITIES

Brock v. Warren County, Tenn., 713 F.Supp. 238 (E.D. Tenn. 1989). An action was taken under a federal civil rights statute and the Tennessee wrongful death statute by the children of a prisoner who died from heat prostration. The district court found that the conditions in the cell where the prisoner was housed, including virtually nonexistent ventilation and extremely high temperature and humidity, were cruel and inhumane. The court also found that the failure of the county commissioners and the sheriff to provide even minimal medical training to jail guards or to provide the prisoner who died from heat prostration with adequate medical care, which might have been simply moving the prisoner, a nondangerous 62-year-old man, to a cooler cell, constituted deliberate indifference to the prisoner's medical needs and were proximate causes of the inmate's death. The county was liable under a civil rights statute for the prisoner's death from heat prostration, where the county commissioners made no effort despite being warned to rectify excessive heat and lack of ventilation problem in the jail and, specifically, in the cell where the deceased prisoner was housed. The deprivation of the prisoner's constitutional rights was the result of a municipal policy. The sheriff, who was the chief supervisor in charge of the county jail, could be held vicariously liable under a civil rights statute for the prisoner's death in light of evidence he directly participated in and knowingly acquiesced in the housing of the prisoner in a cell with inadequate ventilation and extremely high temperature and humidity. The sheriff argued that there was nothing he could do to improve the temperature and humidity conditions in a cell where the prisoner died because funds were controlled by the county commission. Remedial steps, subsequently taken, such as the removal of a metal cover and the placement of a large fan in the hallway outside the cell, could have alleviated adverse conditions without requiring any expenditure of money, and the failure to try to improve

the conditions could result in the sheriff being assessed \$10,000 in punitive damages for the prisoner's death from heat prostration. The court awarded the prisoner's children \$100,000 in compensatory damages against the county and the sheriff. (Warren County Jail, Tennessee)

U.S. Appeals Court
CHALLENGES
EQUAL PROTECTION
PROGRAMS
WOMEN

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
OVERCROWDING
CONDITIONS
EXERCISE

Carver v. Knox County, Tenn., 753 F.Supp. 1370 (E.D. Tenn. 1989). A class action suit was brought on behalf of county jail inmates and pretrial detainees seeking declaratory and injunctive relief concerning conditions of confinement. The district court found that overcrowded conditions at the county jail violated the Fourteenth Amendment as applied to pretrial detainees and the Eighth Amendment as applied to convicted inmates. Rated capacity of the jail is 228. The inmate population at the Jail has hovered between 260 and 270 for several two to three-month periods during the last two years. As a result, many of the inmates were forced to sleep on the floor of the drunk tank. Moreover, the court found that the living conditions in the drunk tank of the jail were particularly deplorable due to the fact that this part of the facility was designed only to hold up to 12 intoxicated individuals for a short period of time, i.e., 24 to 48 hours; yet, the credible proof at trial indicated that this drunk tank regularly housed 30 to 50 persons for extended periods of time up to and exceeding one month. (Knox County Jail, Knoxville, Tennessee)

U.S. District Court
DOUBLE CELLING
TOTALITY

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

U.S. District Court
CELLS
CONDITIONS

Denz v. Clearfield County, 712 F.Supp. 65 (W.D. Pa. 1989). A prisoner brought a civil rights action against Clearfield County and the County moved to dismiss. The district court found that the occurrence of a slip and fall injury as a result of dank, hot and humid cell conditions did not constitute cruel and unusual punishment and did not transform the conduct of the county into a wanton infliction of unnecessary pain. The prison inmate did not have a due process claim where the inmate had an opportunity to pursue a postdeprivation remedy in state court, and the complaint was dismissed. There is no constitutional liberty interest infringed upon by the merely negligent conduct of prisoner officials. (Clearfield County Prison, Pennsylvania)

U.S. District Court
CROWDING
EXERCISE

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 federal court had authority to impose sanctions for violations of the agreement, embodied in the consent judgment, between inmates in the county prison and the county providing for maximum levels of occupancy of the prison and one hour of recreational opportunities per day per inmate as part of the court's general power to interpret and enforce contracts. A prior contempt finding against the prison for violating the maximum inmate population cap established by an agreement between inmates and the prison which was embodied in the consent judgment did not nullify a continued noncompliance with the order by the county. (Essex County Jail, New Jersey)

U.S. District Court
MEDICAL CARE
SANITATION
VENTILATION

Fambro v. Fulton County, Ga, 713 F.Supp. 1426 (N.D. Ga. 1989). The matter regarding conditions at a county jail came before the court ex mero motu after the court received a monitor's tentative findings of fact. The district court found that the substandard delivery of medical care in the jail was unconstitutional because it denied sentenced prisoners and pretrial detainees access to adequate health care in violation of the eighth and fourteenth amendments. The medical system subjected inmates to unnecessary risk of contracting dangerous or fatal communicable diseases, required inmates to suffer unnecessary pain and discomfort without the help of medical science, and, under the system, whole classes of inmates who were dependent on pharmaceuticals were required to wait for up to three days to receive their medicine. The court also found that the substandard sanitation in the jail was unconstitutional. Jails are constitutionally obligated to provide reasonably adequate sanitation for their inmates. This generally requires control of vermin and insects and clean places for eating, sleeping, and working and, additionally, concerns such areas as food preparation, medical facilities, lavatories, and showers. The substandard sanitation in the county jail endangered the health of sentenced prisoners and pretrial detainees, in violation of the eighth and fourteenth amendments. Food was being prepared in unsanitary surroundings and inmates were being required to live and sleep in and around seeping sewerage and in warm dark places which were not regularly and adequately cleaned, lit or ventilated. The court stated: "At various times heretofore, in an effort to address persistent overcrowding, the court has authorized the sheriff in his discretion to release inmates under a prioritized release order and has imposed a fine of \$100 per day for each inmate sleeping on the floor. Other efforts have been made the county in a timid sort of way to select inmates who might be eligible for release. None of these efforts have succeeded in bringing the population of the jail down." In light of the overcrowding, resulting in unconstitutional operation of the county jail, and failure of other means to reduce jail population, a release order was appropriate remedy. (Fulton County Jail, Georgia)

U.S. District Court
EXERCISE
LEGAL
ASSISTANCE
MEDICAL CARE
SHOWERS
TOILETS
TOTALITY OF
CONDITIONS

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 found by the court that the sanitary and hygiene conditions did not violate constitutional rights. Frequent and delayed repairs of the county jail toilets and showers and short-term deprivations of toilet paper, towels, sheets, blankets, mattresses, toothpaste, and toothbrushes did not violate the eighth amendment or due process rights of the inmates and detainees. The evidence failed to show any undue delay in the repair of toilets and showers, and the evidence also failed to indicate that deprivations occurred with sufficient frequency to amount to constitutional deprivation. The court found that the lack of exercise opportunities at the overcrowded, county jail deprived the inmates and detainees of eighth amendment and due process rights, even though the sheriff intended to utilize gymnasium areas more fully in the future. The exposure of violence and the threat of personal harm in the county jail violated the eighth amendment and due process rights of the inmates and detainees, even though experts said that they could sense no pervasive fear or tension in jail. 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
SMOKE

Gorman v. Moody, 710 F.Supp. 1256 (N.D. Ind. 1989). A prisoner brought an action challenging the failure of prison officials to segregate him from smoking inmates. The district court found that the failure of prison officials to segregate smokers from nonsmokers among the inmate population did not violate the eighth amendment because the eighth amendment draws its meaning from the evolving standards of decency in society as a whole. It is relevant that society cannot yet completely agree on the propriety of nonsmoking areas and a smoke-free environment. However, there might come a time

when the evolving standards of decency would demand a smoke-free environment in a prison setting. The deliberate indifference standard was applicable to determine whether the failure of prison officials to segregate smokers from nonsmokers, thus exposing nonsmokers to secondhand smoke, violated their eighth amendment rights, and the prisoner asserting such a claim would have to show that prison officials intentionally exposed them to a known risk of harm and actually intended to harm him. Indiana's Clean Indoor Air Act does not create a protected liberty interest for nonsmoking prisoners to be segregated from smoking prisoners. (Westville Correctional Center, Indiana)

U.S. Appeals Court
CELLS
LAUNDRY
SANITATION

Howard v. Adkison, 887 F.2d 134 (8th Cir. 1989). An inmate brought an action against the supervisory officers at the facility at which he was confined, alleging the violation of his eighth amendment rights. The U.S. District Court entered a judgment in favor of the inmate, and the defendants appealed. The appeals court affirmed and found that the evidence concerning filthy conditions in the inmate's cell was sufficient to support a finding that the inmate's eighth amendment rights were violated. According to the court, inmates are entitled to reasonably adequate sanitation, personal hygiene, and laundry privileges, particularly over a lengthy period. Evidence that the inmate was confined for two years in a cell covered with filth and human waste and was denied access to proper cleaning supplies or laundry service was sufficient to establish that his confinement was cruel and unusual punishment within the meaning of the eighth amendment. Evidence that the inmate complained about filthy conditions in his cell continuously over a two-year period but that supervisory officers failed to provide him with any relief was sufficient to hold officers liable for eighth amendment violations. The appeals court upheld an award of \$500 actual damages, \$1 nominal damages and \$750 punitive damages against the special unit manager, and \$1,000 punitive damages against the lieutenant. (Missouri DOC and Human Resources)

U.S. Appeals Court
CAPACITY
TOTALITY OF
CONDITIONS

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

U.S. Appeals Court
CHALLENGES
SANITATION
BEDDING

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

U.S. District Court
MEDICAL CARE
PROGRAMS
SEPARATION
ODOR

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

responsibility to others whom he then failed to supervise adequately. The plaintiffs in this class action are inmates at Bedford Hills Correctional Facility ("BHCF"), who were housed in Building 118 from 1981 through August 1987. In Building 118 (also known as "solitary" or "Special Housing Unit" ("SHU")), plaintiffs were locked in their cells up to 23 hours of each day, with one hour for recreation. Those plaintiffs suffering from chronic mental illness ("mentally disordered women") were allegedly kept in excessive isolation and denied adequate mental health care in violation of their rights under the eighth and fourteenth amendments of the U.S. Constitution. The mentally disordered women are identifiable by their assaultive behavior and the marked deterioration they exhibited while in confinement. Those plaintiffs not suffering from chronic mental illness ("non-mentally disordered women") maintain that the conditions of their confinement subjected them to cruel and unusual punishment, in violation of the eighth amendment. Throughout the relevant period, the plaintiffs were subjected to noxious odors, noise, and danger as the mentally disordered women engaged in acts of self-destruction, arson, and assaultive behavior. Several mentally disordered women routinely spread feces and urine throughout the unit, flooded the unit with sewerage, and yelled and screamed day and night. These occurrences were frequent, rather than merely an isolated incident. The plaintiffs allege that all of the defendants were deliberately indifferent to their mental health needs. (Bedford Hills Correctional Facility, New York)

U.S. District Court
CAPACITY
CHANGE OF
CONDITIONS
CROWDING
PRETRIAL
DETAINEES

Palmigiano v. DiPrete, 710 F.Supp. 875 (D. R.I. 1989). Rhode Island officials failed to rid themselves of contempt by bringing a correctional facility into compliance with standing orders of the district court governing the conditions of confinement of pretrial detainees. The filing by the Governor and Director of the Rhode Island Department of Corrections of a long-range plan designed to address the growing need for additional space throughout the state correctional system was not the specific and detailed plan that the district court had ordered to take care of the overcrowding problem for the pretrial detainees. Thus, the Governor and Director were in contempt. The crux of an impossibility defense to a contempt charge is a lack of power to carry out orders of the court due to circumstances beyond one's control and means literal inability to take steps necessary to comply with a judicial order or consent decree, not simply the unwillingness to take action because contemnor perceives steps that actually can be taken as politically costly or ideologically repugnant. In light of many steps available to the Rhode Island Governor and the Director of the State Department of Corrections to take care of overcrowding at the prison intake service center, compliance with previous district court orders regarding overcrowding was within the power of the Governor and the Director, and factual impossibility was not a defense to the contempt proceedings for failure to comply with those orders. (Adult Correctional Institutions, Rhode Island)

State Appeals Court
FOOD

Sivak v. Ada County, 769 P.2d 1131 (Idaho App. 1989). A prison inmate filed a habeas petition alleging a denial of his eighth amendment rights due to conditions of confinement in the county jail. The district court upheld a judgment of the Magistrate, dismissing the inmate's petition for writ of habeas corpus, and the inmate appealed. The court of appeals, affirming the decision, found that the inmate's allegations that he had been inadequately fed during confinement in the county jail because his weight decreased by two or three pounds during a one-month period failed to allege dietary deprivation sufficiently serious to constitute cruel and unusual punishment. The eighth amendment, the court noted, "is not implicated by every inmate complaint about the conditions of confinement" nor should the courts be "super-administrators of the prison system." (Ada County Jail, Idaho)

U.S. Appeals Court
BEDDING

Thompson v. City of Los Angeles, 885 F.2d 1439 (9th Cir. 1989). An arrestee brought a civil rights action against the Board of Regents of the University of California whose police officer had arrested him for grand theft auto, and the county in whose jail the arrestee was detained. The U.S. District court dismissed the action as to the university regents and granted summary judgment for the county, and the arrestee appealed. The appeals court, affirming in part, reversing in part and remanding, found that the university was a state instrumentality for eleventh amendment purposes, so the board of regents was not a "person" subject to liability under the federal civil rights statute. Subjecting the grand theft auto arrestee at the county jail to a strip search, x-rays, and a blood test did not violate the arrestee's fourth or fourteenth amendment rights, for purposes of a civil rights action; but it would be presumed that the county maintained the "custom" of unconstitutional jail conditions in the form of a shortage of beds and could be held liable for the arrestee's injuries resulting from the alleged constitutional deprivation of failing to provide him with a bed or mattress for nights spent in the county jail, based on a prior court order regarding the same jail. (Los Angeles County Jail, California)

U.S. District Court
CHALLENGES
OUT OF CELL
TIME
REMEDIES
CROWDING

Vazquez v. Carver, 729 F.Supp. 1063 (E.D.Pa. 1989). Pretrial detainees and inmates brought an action to challenge conditions of confinement at a county prison. The plaintiffs moved for preliminary injunction. The district court found that the detainees and inmates were entitled to preliminary injunction reducing the population from 420 to 310, which was the number of beds in the prison. The limited amount of time out of cells, the reduced living space in many areas of the prison, the limited access to bathroom facilities for many inmates, and the decreased availability of day area space indicated a substantial likelihood of succeeding on merits of claims under the eighth and fourteenth amendments. The potential for future harm from inmate violence in the overcrowded prison constituted "irreparable harm" supporting a request by the pretrial detainees and the inmates for a preliminary injunction to reduce the population allegedly violating the eighth and fourteenth amendments. (Lehigh County Prison, Pennsylvania)

1990

U.S. District Court
PROGRAMS
EXERCISE
SANITATION
ODOR

Buffington v. O'Leary, 748 F.Supp. 633 (N.D.Ill. 1990). A prisoner sued a prison official under Section 1983, alleging Eighth and Fourteenth Amendment deprivation. The U.S. District Court found that the prisoner was not denied constitutional rights by being deprived of education and vocational programs available elsewhere in the prison as the constitution simply does not require prison officials to provide educational, rehabilitative, or vocational programs. The prisoner, who had been given seven hours per week exercise time outside of his cell and had not alleged physical injury from lack of physical movement did not state a cause of action against the prison official for infliction of cruel and unusual punishment. However, he stated a cause of action for constitutional deprivation by alleging that there was "rusted water" and "a scent of bad smelling pipes" in his cell, and that human waste backed up through the plumbing. While the defendant prison official contended that these conditions were no more than "an inconvenience or discomfort," the court found that it could not "with assurance determine that the conditions" in the housing unit met an "essential" or "minimum" standard of sanitation. (Stateville Correctional Center, Illinois)

U.S. District Court
SMOKE

Caldwell v. Quinlan, 729 F.Supp. 4 (D. D.C. 1990). An inmate brought a civil rights action against the Director of a Federal Bureau of Prisons, alleging that his frequent exposure to passive tobacco smoke violated his constitutional rights. The district court granted a motion filed by the Director to dismiss. The court stated that the director's failure to constantly segregate smokers from nonsmokers did not constitute cruel and unusual punishment and that individuals do not have a constitutional right to be free from passive tobacco smoke, so the exposure to passive smoke did not trigger protections of the due process clause or violate equal protection rights. In addition, the Bureau of Prisons' smoking policy, which provided only that the warden may implement a smoking policy at his discretion, did not create a liberty interest to a smoke-free prison term. The inmate's occasional exposure to smoke drifting over from designated "smoking" areas did not violate the eighth amendment. According to the court, the Federal Bureau of Prisons has not been indifferent to nonsmoking inmates. Federal regulations provide that "The Warden, as set forth in this rule, may establish smoking/no smoking areas with the institution. (a) Smoking is prohibited in those areas where to allow smoking would pose a hazard to health or safety. (b) Smoking/no smoking areas may be established in other areas of the institution, at the discretion of the Warden."

The court found that contemporary society "has yet to view the exposure to second-hand smoke as transgressing its 'broad and idealistic concepts of dignity, civilized standards, humanity and decency.'" The plaintiff's occasional exposure to such smoke, therefore, was not cruel and unusual punishment. (U.S. Penitentiary, Marion, Illinois)

U.S. Appeals Court
DOUBLE CELLING

C.H. v. Sullivan, 920 F.2d 483 (8th Cir. 1990). Prisoners serving sentences under the federal witness security program brought action against the Attorney General and his agents, challenging double-celling. On cross motion for summary judgment, the U.S. District Court granted the defendants' motion, and the prisoners appealed. The court of appeals, affirming the decision, found that the court did not have jurisdiction over the prisoners' breach of contract claim. It also found that the double-celling of prisoners is not unconstitutional for a general prison population absent deprivation of food, medical care, sanitation, increased violence, or other conditions intolerable for incarceration, and the government's practice of selecting double-celled prisoners by seniority was not arbitrary and capricious and did not violate the due process rights of prisoners serving sentences under the Federal Witness Protection Program. Some procedure for choosing which prisoners would be double-celled was necessary, and the seniority system prevented discriminatory treatment and encouraged witnesses to obey prison regulations. (Federal Correctional Institute, Sandstone, Minnesota)

U.S. Appeals Court
SMOKE

Clemmons v. Bohannon, 918 F.2d 858 (10th Cir. 1990). A state prisoner brought a civil rights action alleging violations of his constitutional rights arising out of involuntary subjection to environmental tobacco smoke. Summary judgment for the defendants was granted by the U.S. District Court, and the prisoner appealed. The court of appeals found that exposing the prisoner to an unreasonable risk of a debilitating or terminal disease offends "evolving standards of decency" protected by the Eighth Amendment. According to the court, a relevant inquiry is whether long-term exposure to environmental tobacco smoke poses an unreasonable risk of harm to an inmate's health and is a relevant question in determining whether a prison policy of permitting indefinite double-celling of smokers with non-smokers against the nonsmokers' expressed will is cruel and unusual punishment in violation of the Eighth Amendment. (Kansas State Penitentiary)

U.S. Appeals Court
ODORS

Givens v. Jones, 900 F.2d 1229 (8th Cir. 1990). A former inmate filed a civil rights action against various employees and officials of a prison asserting violations of his constitutional rights. The U.S. District Court granted the defendants' motions for summary judgment on all but three of the claims, and the defendants named in the remaining three claims appealed. The court of appeals, reversing the lower court decision, found that at the time a psychiatrist prescribed a medication to which the inmate claimed to be allergic, it was not clearly established that such conduct constituted a deliberate indifference to the inmate's serious medical needs. It was also found that prison officials could reasonably have believed that the noise and fumes caused by the remodeling of the prison, which the inmate claimed gave him migraine headaches, were not so excessive as to constitute an eighth amendment violation. According to the court, a constitutional guarantee of freedom from cruel and unusual punishment does not protect against mere acts of negligence on the part of prison officials and employees. To be cruel and unusual punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety and it is obduracy and wantonness, not inadvertence or error in good faith, that characterize the prohibited conduct. (Missouri Training Center for Men)

U.S. District Court
SMOKE
MEDICAL CARE
DISCIPLINE
CROWDING
DOUBLE CELLING

Harris v. Murray, 761 F.Supp. 409 (E.D. Va. 1990). An inmate filed an action under a federal civil rights statute, asserting numerous allegations relating to conditions of confinement. On the defendants' motion for summary judgment, the district court found that the dismissal of the inmates various claims was warranted. For example, it noted that, officials at the Virginia prison did not violate the inmate's civil rights in connection with the alleged smoke-filled condition of the visiting room. Officials had taken adequate measures to alleviate the inconvenience of occasional incidents when there were several smokers, and the inmate had not alleged any serious medical problems resulting from the room's condition. The officials did not violate the inmate's civil rights through alleged harassment of the inmate by an officer who was attempting to clear the visitation room; the officer was merely trying to organize inmates exiting that room and to make sure they did so in a timely and orderly fashion, and the inmate did not assert that he was harmed in any way physically or emotionally by the alleged harassment, and the inmate's civil rights were not violated by his detention prior to a hearing to determine the accuracy of the charge that he disobeyed a direct order to leave the visiting room in a timely manner. The prison officials were not deliberately indifferent to the inmate's need for reading glasses during the ten days he was in administrative segregation, for purposes of a civil rights claim; although an inconvenience, that deprivation did not rise to a level of cruel and unusual punishment. The inmate failed to establish deliberate indifference to his serious medical needs in connection with an allegedly excessive waiting period to see a doctor; delays of seven days on the inmate's request for a routine eye examination and approximately two weeks for treatment concerning hair loss problems were reasonable under the circumstances. The inmate's claim that he was occasionally forced to stand while eating due to insufficient seating space in the dining area did not state sufficient facts to warrant a finding of cruel and unusual punishment. Finally, the court found that the double celling of prisoners does not amount to an Eighth Amendment violation where other prison living conditions are constitutionally adequate; although a cell is designed for one inmate, double or even triple occupancy is not in itself cruel and unusual punishment. (Nottoway Correctional Center, Virginia)

U.S. District Court
FOOD
MEDICAL CARE
PRETRIAL
DETAINEE
SANITATION

Hodge v. Ruperto, 739 F.Supp. 873 (S.D.N.Y. 1990). A former pretrial detainee brought a civil rights claim against police officers, commissioner and mayor alleging constitutional violation as a result of treatment before he was arraigned. The district court found that the claim that officers deprived the detainee of food and water for two and one-half days while confining him to an overcrowded unsanitary cell charged sufficiently flagrant conduct to allow reasonable inference that the conduct was attributable to municipal policy. The alleged deprivation allowed a reasonable inference of inadequate supervision which was deliberate indifference to constitutional rights. The constitutional rights of pretrial detainees were not violated by the failure of police to allow him to contact family or attorney during prearrestment detention. A pretrial detainee does not have a constitutional right to a telephone call on completion of booking formality. Prearrestment detainees are entitled

to adequate food, clothing, shelter, sanitation, medical care, and safety. The allegation by the pretrial detainee that he had to sleep on a steel frame without a mattress, that sanitation facilities were so filthy he was unable to use them and that he was denied access to necessary medical care stated a claim for violation of fourteenth amendment rights. (43rd Precinct, New York)

U.S. Appeals Court
CAPACITY
REMEDIES
CROWDING

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. District Court
DOUBLE CELLING

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

U.S. District Court
FOOD
EXERCISE
CLOTHING
BEDDING
ISOLATION
CRUEL AND
UNUSUAL
PUNISHMENT

LeMaire v. Maass, 745 F.Supp. 623 (D. Or. 1990). An inmate brought a civil rights action, alleging unconstitutional conditions of his imprisonment in a disciplinary segregation unit. The U.S. District Court found: The use of full mechanical in-cell restraints, without control procedures to ensure that such practice was used only for safety purposes and limited to time necessary to serve that purpose, constituted cruel and unusual punishment; requiring inmates to shower in full mechanical restraints had no legitimate penological justification, and thus constituted cruel and unusual punishment; the practice of placing inmates on a controlled feeding status, during which they are fed "Nutraloaf," for reasons other than misuse of food or utensils for up to seven days at a time constituted cruel and unusual punishment; there was no legitimate penological justification for extending controlled feeding after misconduct has ceased or for conduct that could continue even with such feeding; the placement of inmates with serious medical problems in "quiet cells" from which they could not summon guards to assist them constituted cruel and unusual punishment; the policy of taking inmate's clothing, bedding and personal property as punishment for behavior not connected to misuse of clothing or property and requiring inmates to "earn back" items taken by demonstrating good behavior lacked legitimate penological justification and constituted cruel and unusual punishment; and the exercise conditions in the prison disciplinary unit constituted cruel and unusual punishment because the inmate was denied outdoor exercise for nearly five years and it was not possible for him to get sufficient exercise in his cell to prevent physical and mental deterioration. (Oregon State Penitentiary)

U.S. District Court
BEDS
OUT OF CELL TIME
PRETRIAL DETAINEES

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

U.S. Appeals Court
CELLS
CLASSIFICATION

McCord v. Maggio, 910 F.2d 1248 (5th Cir. 1990). An inmate at the state penitentiary brought a civil rights action for prison officials' alleged violation of his eighth amendment rights in connection with conditions of confinement and with his classification for imprisonment in a single cell. The U.S. District Court entered a judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming in part, reversing and remanding in part, found that the civil rights claim

arising from the conditions of the inmate's confinement, including his alleged placement in an unlighted, windowless cell into which water and human sewage was allegedly allowed to seep, would be remanded to a magistrate for additional findings of fact, but the inmate was not denied procedural due process by his initial and ongoing confinement in a closed cell, where a lockdown review board had considered the inmate's entire record, including the need to protect him from reprisals or harm from other inmates, in ordering assignment, and where the inmate's classification was reviewed every 90 days at a reclassification board hearing of which the inmate was given prior notice. (Louisiana State Penitentiary)

U.S. Appeals Court
FACILITIES

McDonald v. Armontrout, 908 F.2d 388 (8th Cir. 1990). An appeal was taken from an order of the U.S. District Court modifying a consent decree entered in an action concerning the conditions in the prison's capital punishment unit. The appeals court affirmed the decision, finding that the plan to move the prison's capital punishment unit to a new facility was a change in circumstance that warranted modification of the consent decree governing conditions at the old facility, and the modifications of the consent decree satisfied constitutional requirements, although access to recreational activities and telephones would be more restricted at the new facility for some inmates. The new facility could accommodate a larger classification system, entitling inmates with less restrictive classifications to more recreation time and other additional benefits. (Missouri State Penitentiary)

U.S. District Court
CONDITIONS OF
CONFINEMENT
FOOD
VISITATION
USE OF FORCE

Morrison v. Martin, 755 F.Supp. 683 (E.D.N.C. 1990). A state prisoner brought civil rights claims against state officials and employees, and the defendants moved for summary judgment. The district court found that it was without jurisdiction over the civil rights suit to the extent it sought recovery against state officials in their official capacity. It also found that the prisoner did not state a cognizable claim for relief under civil rights statutes by accusing correctional personnel of placing voices in his head to ask about his court case and emitting constant sound waves, as the court could take judicial notice that the impossible contentions could not be true. In addition, the vague and generalized civil rights claims by the prisoner that he had missed meals from time to time and occasionally had not had a mattress, which contained no information as to the location, date or circumstances, could not support an action based on Section 1983, and the subjection of the prisoner to verbal abuse or profanity does not rise to a level of constitutional deprivation cognizable in a civil rights action. Furthermore, the prisoner had no constitutional entitlement to contact visitation during a limited period of time while he was on administrative segregation pending custody review, particularly given the prisoner's refusal to cooperate with diagnostic and intake procedures, and the fact that denial of the contact visits was done pursuant to intake policy and thus constituted a legitimate administrative decision. The claim based on alleged removal of "various appeals materials" and a Bible from his cell for a period of 19 days while he was confined to suicide watch did not state a cognizable claim, particularly where materials were seized pursuant to established policies concerning suicide watch and the prisoner had not shown harm caused by the alleged seizure. Finally, the prisoner's allegation of excessive force was insufficient to state a Section 1983 claim against correctional officers, where the inmate's claims that prison staff subjected him to daily "stinging" and "humiliating impulses" which caused him to ejaculate and urinate on himself, were incredible. The entire picture presented in the inmate's unrealistic and delusional complaint rendered credible beyond doubt the officers' averments that any force used was needed to cope with the inmate's irrationality and that the degree of force used was not excessive. (North Carolina Department of Correction)

U.S. District Court
CROWDING
REMEDIES

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)

U.S. Appeals Court
DOUBLE CELLING
TOTALITY OF
CONDITIONS
CROWDING
REMEDIES

Tillery v. Owens, 907 F.2d 418 (3rd Cir. 1990). An inmate brought an action challenging conditions of confinement at the state correctional institution. The U.S. District Court granted relief and the state and prison officials appealed. The appeals court, affirming the decision, found that the evidence supported a determination that double-celling violates the eighth amendment in view of other conditions to which inmates were subjected, and an order banning the double-celling was within the district court's discretion given its determination that the institution was overcrowded, that the lighting, ventilation, plumbing, showers, and fire safety provisions fell below constitutional norms, that violence and insecurity were pervasive, that medical and mental health care were constitutionally deficient, that inmates had limited opportunities for recreation outside their cells, that inmates were

double-celled for long periods of time, and that inadequate screening before double-celling of inmates resulted in "fatal pairings". It was not necessary that there be a showing that double-celling itself caused increased violence, disease, and other negative conditions. The totality of conditions within the institution must be considered in determining whether conditions of confinement violate the eighth amendment. The constitutionality of double-celling had to be analyzed in context of the district court's determination, well supported by record, that almost every element of physical plant and provision of services at the institution fell below constitutional norms. The district court order requiring state and local authorities to cease double-celling inmates in cell blocks by a specified date, to remedy the eighth amendment violation, was within its discretion, and did not impermissibly invade the state's prerogative in view of the option available of hiring more guards so that empty tiers at the institution could be used, as an alternative to transferring inmates to other institutions. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. District Court
CLOTHING
FOOD
MEDICAL CARE
POPULATION
STAFFING
TRANSFERS
TOTALITY OF
CONDITIONS
CAPACITY

Tyler v. U.S., 737 F.Supp. 531 (E.D. Mo. 1990). The district court entered an interim order amending a previous order and permitting an increase in the ceiling cap from 450 to 481 of inmates in the St. Louis City medium security institution workhouse, provided that the number of guards and other essential staff was increased by 10% within 30 days, the quantity or quality of food was not decreased, clothing allowances or the availability of medical and dental treatment was not reduced, all inmates found guilty and sentenced were transferred to the designated penal institution not more than ten days after the imposition of a sentence, and educational facilities were broadened and expanded. Officials of the institution were required to submit plans concerning the implementation of house arrests for detainees, a plan for the expeditious transfer of women inmates to another site, and a plan for the establishment of a drug treatment center. (St. Louis City Medium Security Institution Workhouse, Missouri)

U.S. District Court
CRUEL AND
UNUSUAL
PUNISHMENT
SMOKE

West v. Wright, 747 F.Supp. 329 (E.D. Va. 1990). An inmate brought a pro se civil rights complaint alleging that his exposure to other prisoners' cigarette smoke constituted cruel and unusual punishment, and prison officials moved for summary judgment. The U.S. District Court found that the prisoner, who did not suffer from any preexisting medical condition that was aggravated by tobacco smoke, was not subjected to cruel and unusual punishment as a result of being exposed to other prisoners' cigarette smoke in light of existing safeguards implemented by prison officials to protect nonsmokers from environmental tobacco smoke. Each cell had a window which the inmate may open or close as he chooses. Each cell and day room also had output and input vents that provided continuous circulation of natural air for adequate ventilation. The inmates assigned to the general population may also have personal fans in their cells and pedestal fans are located in each of the housing units and are operated by the inmates. It is also noted that smoking is prohibited in the library, dining hall, gymnasium and medical department, and inmates in the general population are afforded recreational opportunities and are confined in their housing units only during count and after lockdown in the evening. (Brunswick Correctional Center, Virginia)

1991

U.S. Appeals Court
DEFENSES
STATE
REQUIREMENTS
OVERCROWDING
CONDITIONS

Alberti v. Sheriff of Harris County, Tex., 937 F.2d 984 (5th Cir. 1991), cert. den., 112 S.Ct. 1994. Appeal was taken from remedial orders of the U.S. District Court entered in an action challenging conditions in a county jail system. The court of appeals, remanding the decision, found that the state could be held liable for conditions in the county's jail system based on its failure to accept the transfer of convicted felons housed in the county jail but sentenced to the state prison system, or to reimburse the county for the cost of their housing, in view of Texas statutes making the state responsible for the confinement of convicted felons. Remand was required in the jail overcrowding case to determine whether the conditions at the county jails were caused by the county's deliberate indifference to the prisoners' needs, in violation of the Eighth Amendment. Although evidence indicated that overcrowding was caused by the state's refusal to accept felons incarcerated in jail but sentenced to the state prison system, evidence also indicated problems with the jails' plumbing, ventilation, fire, safety, supplies, food service, and medical care. (Harris County Sheriff Department, Texas)

U.S. District Court
SMOKE

Harris v. Murray, 758 F.Supp. 1114 (E.D. Va. 1991). A prisoner brought a Section 1983 claim challenging conditions of confinement. The U.S. District Court found that the presence of cigarette smoke in the visitation room during visiting hours did not amount to cruel and unusual punishment. The court found that prison officials had taken adequate measures to alleviate the inconvenience of occasional incidents when the visiting room had several smokers, including a ventilation system. (Nottoway Correctional Center, Virginia)

U.S. Appeals Court
HEATING
CHALLENGES
FACILITIES

Henderson v. DeRobertis, 940 F.2d 1055 (7th Cir. 1991), *cert. den.*, 112 S.Ct. 1578. Inmates brought an action against prison officials alleging that their constitutional rights were violated when they were subjected to freezing temperatures. Following a jury trial, the U.S. District Court entered judgment in favor of officials notwithstanding the jury verdict in favor of the inmates, on the basis of qualified immunity. Thereafter, two other inmates filed Section 1983 complaints based upon the same factual circumstances and sought to certify as a class the prisoners confined during a four-day period when adequate heat was not provided. The U.S. District Court dismissed the cases with prejudice, and on consolidated appeal, the court of appeals found that even though the inmates were subjected during a period of abnormally cold weather due to a malfunctioning heating system, the inmates had a clearly established constitutional right, established in 1982, to have adequate heat and shelter, and the prison officials were not entitled to qualified immunity. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
SAFETY
THREATS

Hobbs v. Evans, 924 F.2d 774 (8th Cir. 1991). An inmate brought a civil rights action against prison officials, asserting an Eighth Amendment right to be free from violent attacks by fellow inmates. The U.S. District Court entered judgment against two officials, and they appealed. The court of appeals found that the prison officials did not act in reckless disregard of the inmate's right to be free from inmate attacks absent a showing that the inmate was faced with a pervasive risk of harm at the institution and that the officials failed to respond reasonably to that risk. The finding that a prison guard acted in reckless disregard of the inmate's right to be free from assault by other inmates was sufficiently supported by evidence that the inmate suffered three assaults after the guard labeled him as an informant. (Maximum Security Correctional Facility, Tucker, Arkansas)

U.S. Appeals Court
OUT OF CELL TIME

Johnson v. Moore, 926 F.2d 921 (9th Cir. 1991). An inmate brought a civil rights action against the superintendent of a state correctional facility. The U.S. District Court entered summary judgment against the inmate, and he appealed. The court of appeals found that the inmate did not have a due process right to a hearing before he was placed in "cell lockdown" inasmuch as the lockdown was not punishment but was pursuant to prison policy mandating that all inmates not working or attending classes be confined to their cells during the day. (Clallam Bay Corrections Center, Washington)

U.S. Appeals Court
OUT OF CELL TIME

Johnson v. Moore, 948 F.2d 517 (9th Cir. 1991). An inmate brought an action against the superintendent of a facility, the challenging constitutionality of prison conditions and policies. The U.S. District Court entered summary judgment in favor of the superintendent, and the inmate appealed. The court of appeals found that confinement to a cell pursuant to a policy that all inmates not working or attending classes be confined to their cells during the day did not violate, in and of itself, any recognized liberty interests of the inmate. It was also found that the inmate's challenge to prison policies was rendered moot by his transfer to another facility, absent any reasonable expectation of returning to the first facility. (Clallam Bay Corrections Center, Washington)

U.S. Appeals Court
CONDITION OF
CONFINEMENT
CRUEL AND
UNUSUAL
PUNISHMENT

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

U.S. Appeals Court
CROWDING

Moore v. Morgan, 922 F.2d 1553 (11th Cir. 1991). A county jail inmate brought a civil rights action against a county sheriff and county commissioners, challenging jail conditions. After determining that the inmate proved conditions at the county jail violated the Eighth Amendment due to overcrowding and lack of out-of-cell time, the magistrate judge concluded that the sheriff and county commissioners were entitled to qualified immunity. The U.S. District Court adopted the magistrate judge's recommendation and directed judgment against the inmate, who appealed. The court of appeals found that the defense of qualified immunity was not available with respect to official capacity claims. In addition, the county failed to satisfy its constitutional responsibility in maintaining the county jail by its delay in rectifying jail overcrowding, and it was liable for compensatory damages, despite voters' overwhelming rejection of a proposal to levy a tax to build a new jail. According to the court, the ways in which the commissioners actually obtained money to finance necessary jail improvements, when put under the threat of litigation, provided compelling evidence of fact that the commissioners could have taken steps to improve the jail at a much earlier date. (Chambers County Jail, Alabama)

U.S. Appeals Court
TOILETS
VISITATION

Patchette v. Nix, 952 F.2d 158 (8th Cir. 1991). Prisoners brought an action contending that they had liberty interest in existing visitation regulations and that changing those regulations and overcrowded prison conditions violated their constitutional rights. The U.S. District Court found that the change in visitation regulations violated due process but that there was no Eighth Amendment violation, and appeal was taken. The court of appeals found that the prisoners had a liberty interest in weekend visitation which could not be abridged without affording due process. The court also found that the temporary inconveniences caused to the inmates as a result of 50% deficiency in toilet facilities did not violate the Eighth Amendment where a corrective action of moving prisoners to a new facility was expected in a matter of months. (Iowa State Penitentiary Farm I)

U.S. Appeals Court
CLOTHING
BEDDING
TOTALITY OF
CONDITIONS

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

U.S. District Court
CONDITIONS
SANITATION

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

U.S. Supreme Court
CONDITIONS
CRUEL AND
UNUSUAL
PUNISHMENT

Wilson v. Seiter, 111 S.Ct. 2321 (1991). Prisoners brought an action against prison officials alleging cruel and unusual punishment. The U.S. District Court granted the officials' motion for summary judgment and the prisoners appealed. The court of appeals affirmed, and certiorari was granted. The U.S. Supreme Court, vacating and remanding, found that the prisoners claiming that conditions of confinement constituted cruel unusual punishment, were required to show deliberate indifference on the part of the prison officials, noting that "nothing so amorphous as 'overall prison conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists." (Hocking Correctional Facility, Ohio)

1992

U.S. District Court
DOUBLE CELLING
CONDITIONS OF
CONFINEMENT

Baker v. Holden, 787 F.Supp. 1008 (D. Utah 1992). Prison officials sought to vacate a preliminary injunction prohibiting double celling. The district court found that double celling would not manifest deliberate indifference to inmate's needs in certain cell blocks, but double bunking in a cell block would be unconstitutional where conditions of confinement, which included small cell size with no windows, no adjacent common area and inadequate fire escape and congestion caused by cell release levers, would produce the effective deprivation of the basic human needs of shelter and adequate living space. (Wasatch Unit, Utah State Prison)

U.S. District Court
CONDITIONS

Cameron v. Tomes, 783 F.Supp. 1511 (D. Mass. 1992). An involuntarily committed patient brought an action against the Commissioner of the Department of Mental Health and the administrator of a treatment center for the sexually dangerous, alleging that the defendants had violated his constitutional rights by failing to provide him with minimally adequate treatment. The district court found that rigid application of some of the center's rules and policies to the patient was an unconstitutional failure to exercise professional judgment. According to the court, decisions about the treatment of an involuntarily committed patient cannot be constitutionally sufficient if in making them there is deliberate indifference to the patient's mental health needs. Applying a policy requiring patients to reach a destination within 10 minutes to an involuntarily committed patient with only one leg without any consideration for his disability failed to exercise professional judgment. (Massachusetts Treatment Center for the Sexually Dangerous)

U.S. District Court
HEARING IMPAIRED

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. Appeals Court
SMOKE
CRUEL AND
UNUSUAL
PUNISHMENT

Clemmons v. Bohannon, 956 F.2d 1523 (10th Cir. 1992). A prison inmate brought a civil rights action alleging violations of the Eighth and Fourteenth Amendments arising out of involuntary subjection to environmental tobacco smoke. The U.S. District Court granted prison officials summary judgment, and the inmate appealed. The court of appeals found that the inmate sometimes being forced to share a cell with a smoker, and being exposed to smoke from other inmates and guards, did not constitute an Eighth Amendment violation; respiratory and eye irritation were not sufficiently serious, and the inmate did not offer any evidence of effects pertaining to his personal health. (Kansas State Penitentiary)

U.S. Appeals Court
SAFETY

Gibson v. Foltz, 963 F.2d 851 (6th Cir. 1992). The widow of an inmate who was killed when he was stabbed by a fellow inmate sued prison officials and a corrections officer under Section 1983. The U.S. District Court granted the defendants' motion for summary judgment. The appeals court found that the widow failed to show that the assault was a result of deliberate indifference by the defendants. The corrections officer's failure to be at the area of the prison in which the inmate was fatally assaulted with a weapon, and the officer's alleged failure to conduct required searches of cells and inmates, did not rise to a level of "deliberate indifference," and thus, did not violate the Eighth Amendment. There was no evidence that they knew that the victim was in danger or that any specific dangerous condition existed in the cell block in which the assault occurred. (State Prison of Southern Michigan)

U.S. Appeals Court
CLOTHING

Gordon v. Faber, 973 F.2d 686 (8th Cir. 1992). Inmates at a state prison brought a Section 1983 action against a security officer. The U.S. District Court assessed damages of \$75 per inmate and ordered the officer to pay costs. The officer appealed and the court of appeals affirmed the decision, finding that the Eighth Amendment rights of the prisoners were violated by their being left outside without proper protection in freezing temperatures for periods varying from one hour to one hour and forty-five minutes, while their living facilities were searched for a weapon alleged to be hidden there. (Iowa Men's Reformatory, Anamosa, Iowa)

U.S. District Court
SMOKE

Guilmet v. Knight, 792 F.Supp. 93 (E.D. Wash. 1992). A prison inmate brought a suit alleging that his Eighth Amendment rights were violated where he was housed with a cellmate who smoked. Upon the defendant's motion for summary judgment, the district court found that the prisoner was not subjected to cruel and unusual punishment in violation of the Eighth Amendment when he was housed for fifteen days with a cellmate who smoked. The intermittent exposure to environmental tobacco smoke during the course of those fifteen days did not pose an unreasonable risk to the prisoner's health and did not deny him the minimal civilized measure of life's necessities. In addition, the conduct of the correctional unit supervisor, who moved the inmate within ten days of his complaint, did not reflect a culpable state of mind. The court noted that the comparatively short delay that occurred was justified by the need to find an inmate with whom the plaintiff would be compatible. Since consideration of the inmate's compatibility is necessary to preserve prison security, the delay in moving the plaintiff was not unreasonable. (Washington State Penitentiary)

U.S. Appeals Court
EXERCISE
SHOWERS

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

U.S. Appeals Court
SMOKE

Hunt v. Reynolds, 974 F.2d 734 (6th Cir. 1992), cert. denied, 114 S.Ct. 709. State prison inmates brought a Section 1983 action against prison officials, claiming deprivation of their Eighth Amendment rights by virtue of their being compelled to share cells with smokers. The U.S. District Court entered judgment for the defendants, and the inmates appealed. The court of appeals, reversing and remanding, found that a genuine issue existed as to whether prisoners had serious medical needs for a smoke-free environment. The court noted that prisoners allergic to the components of tobacco smoke, or who can attribute their serious medical conditions to smoke, are entitled to appropriate medical treatment, which may include removal from places where smoke hovers. (Tennessee Department of Corrections)

U.S. Appeals Court
CRUEL AND
UNUSUAL
PUNISHMENT

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

U.S. District Court
DOUBLE CELLING

Jensen v. Gunter, 807 F.Supp. 1463 (D.Neb. 1992). Nebraska inmates brought class actions under a federal civil rights statute, alleging that the practice of double celling violated the Eighth Amendment, and that the penitentiary's policy relating to the inmate liability for contraband in a double cell violated the Fourteenth Amendment's due process clause. The district court adopted a report and recommendation of a U.S. Magistrate Judge, concluding that the rule providing a presumption that each inmate in a living unit has knowledge of the presence of contraband found in the living unit, and that each inmate charged with discovery of such contraband shall have the burden of coming forward with evidence to rebut the presumption, was not pre se unconstitutional. Each inmate had available state court remedies and federal court actions in which to challenge the sufficiency of evidence. In addition, evidence was insufficient to show that double celling taxed the penitentiary beyond its limits to provide essential human services, resources, and adequate physical structures to house inmates in violation of the Eighth Amendment. However, the random placement of new inmates in double cells under volatile conditions that existed in the penitentiary's main housing units was not a reasonable response to the persuasive risk of harm to those inmates, and therefore such placement violated the Eighth Amendment. Information gathered and compiled during the initial intake of inmates into state prisons was not considered in placement of new inmates into double cells, and such information could be of valuable assistance in predicting compatibility of cellmates. (Nebraska State Penitentiary)

U.S. Appeals Court
SMOKE

McKinney v. Anderson, 959 F.2d 853 (9th Cir. 1992), affirmed, 113 S.Ct. 2475. An inmate brought a civil rights action against prison officials alleging a violation of the Eighth Amendment due to his exposure to environmental tobacco smoke. The U.S. District Court directed verdict for prison officials, and the inmate appealed. The court of appeals affirmed in part, reversed in part, and remanded, and certiorari was granted. The U.S. Supreme Court vacated and remanded. Thereafter, the court of appeals found that housing a prisoner in an environment that exposed him to levels of environmental tobacco smoke that posed an unreasonable risk of harming his health satisfied the objective component of the Eighth Amendment claim of cruel and unusual punishment; however, the inmate would have to establish a subjective component of the claim on remand by showing that prison officials showed deliberate indifference to the inmate's long-term exposure to environmental tobacco smoke. (Nevada State Prison, Carson City)

U.S. District Court
SECURITY

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

U.S. District Court
LOCKDOWN

Stewart v. McGinnis, 800 F.Supp. 604 (N.D.Ill. 1992), affirmed, 5 F.3d 1031. A state inmate brought a civil rights action against various state and prison officials in both their individual and official capacities alleging that he suffered several constitutional violations during his incarceration at a state facility. On cross motions for summary judgment, the district court found that the inmate was transferred out of the correctional facility, and was under no threat of repeated injury. He therefore lacked standing to bring claims for declaratory and injunctive relief under Section 1983. The imposition of lockdowns without notice or a hearing did not violate the inmate's procedural due process rights; the inmate had no constitutionally based liberty interest in nonlockdown conditions that entitled him to due process protection before a lockdown was imposed. (Stateville Correctional Center, Illinois)

U.S. District Court
CRUEL AND
UNUSUAL
PUNISHMENT
STATE
REQUIREMENTS
MEDICAL CARE

Swoboda v. Dubach, 788 F.Supp. 519 (D. Kan. 1992), modified, 992 F.2d 286. An inmate brought a pro se action against the county board of commissioners, the sheriff, and others involved in operating the county jail, seeking damages, declaratory judgment, and injunctive relief arising out of conditions of the inmate's confinement in jail as a pretrial detainee and after conviction. The defendants moved for dismissal. The district court found that the inmate, having made no claim that he had needed and been denied medical care, was not entitled to maintain an action based on a claim that medical care had been withheld from inmates in drug withdrawal. In addition, although a jail inspection report indicated that the county jail was unsatisfactory in several categories, the report did not establish that conditions at the county jail were so deficient or severe during the inmate's confinement as to constitute cruel and unusual punishment or to constitute punishment during the inmate's pretrial confinement. The appeals court affirmed the decision regarding conditions, but remanded the case for further hearing regarding a claim of excessive force. (Doniphan County Jail, Kansas)

U.S. District Court
PLUMBING
SANITATION

Warren v. Stempson, 800 F.Supp. 991 (D.D.C. 1992), affirmed, 995 F.2d 306. An inmate brought a Section 1983 action regarding his treatment and prison conditions. The inmate claimed that the adjustment segregation cell block into which he had been placed was plagued with rats, mice, roaches, spiders, flying bugs, insects, birds and lice, and that the shower water was usually cold. The court did not condone such conditions and believed that, if they exist, they were substandard, the court did not believe they rose to a level of cruel and unusual punishment under the Eighth Amendment. (District of Columbia)

U.S. District Court
CELLS
SANITATION

White v. Nix, 805 F.Supp. 721 (S.D. Iowa 1992), affirmed, 7 F.3d 120. An inmate brought a civil rights suit against prison officials arising out of his confinement in a "screened" prison cell. The district court found that the placement of the state inmate in the cell did not violate his Eighth Amendment right to be free from cruel and unusual punishment. The cell was in a cellhouse that housed inmates pending investigations for disciplinary infractions. The cell had a toilet, sink, a single bed and a table. A screened wire mesh covers the bars of the cell. The court ruled that any uncleanliness in the interior of the cell could have been corrected by the inmate's request for cleaning supplies. In addition, the inmate was only confined to the screened cell on a temporary basis for eleven days. The court also found that the inmate failed to show that his placement in the screened prison cell was for other than reasons of institutional security and safety following his assaultive behavior. The inmate failed to prove that his placement was retaliatory, because of his earlier lawsuits. The inmate also failed to show a violation of his due process rights arising from the officials' 48-hour delay in transferring him from the screened cell after he exhausted his administrative appeals in a disciplinary matter where the defendant did not have a liberty interest in the immediate transfer by reason of an informal prison rule that inmates in summary segregation were not to be transferred until they exhausted their administrative appeals. (Iowa State Penitentiary)

U.S. District Court
HYGIENE

Williams v. ICC Committee, 812 F.Supp. 1029 (N.D.Cal. 1992). An inmate filed a pro se Section 1983 action against prison officials alleging that he had been deprived of his eyeglasses although he was legally blind, deprived of access to courts, denied an opportunity to make legal phone calls, and was discriminated against based upon his race. He also sought appointment of counsel pursuant to the in forma pauperis statute. The court found that allegations of the prison officials' deliberate denial of toilet paper and soap for an extended period were more significant than a de minimis intrusion and constituted denial of minimal civilized measures of life's necessities so as to state a claim under Section 1983 for violation of the Eighth Amendment. (San Quentin Prison, California)

U.S. Appeals Court
FOOD
OUT OF CELL TIME
PROGRAMS
SANITATION

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)

U.S. District Court
OVERCROWDING
PRETRIAL
DETAINEES

Young v. Keohane, 809 F.Supp. 1185 (M.D. Pa. 1992). A pretrial detainee brought a *Bivens* civil rights action alleging that prison officials violated the detainee's constitutional rights. Cross motions for summary judgment were made. The district court found that the prison officials were not entitled to qualified immunity on claims that overcrowding violated the detainee's due process rights. The detainee was confined to one room with up to eleven other people between twenty-two and twenty-four hours per day without a wash basin, toilet, table or chairs, or drinking fountain under more restrictive conditions than those placed upon convicted prisoners. (United States Penitentiary, Lewisburg, Pennsylvania)

1993

U.S. District Court
FLOOR, SLEEPING
BEDS

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 district court found that the intimidation of the state inmate by another inmate where the intimidation did not result in any actual injury but only in the inmate giving the other inmate his pork and beef from his meals and being forced to sleep on a mattress on the floor of his cell was not a violation of a clearly established constitutional right. Therefore, the state officials were entitled to qualified immunity from liability in the Section 1983 action with respect to the intimidation claims. The court noted that requiring an inmate to sleep on the floor, by itself, is not a constitutional violation. In Hawaii, there is no constitutional difference between sleeping on a mattress placed on a concrete slab and sleeping on a mattress placed on a concrete floor. (Halawa Correctional Facility, Hawaii)

U.S. District Court
DOUBLE CELLING

Barajas v. Waters, 815 F.Supp. 222 (E.D. Mich. 1993). Inmates brought a Section 1983 action against prison officials asserting claims relating to conditions of confinement and court access. The officials filed a motion to dismiss or for summary judgment. The district court granted the motion. The court found that the inmates failed to show that double celling violated the Eighth Amendment. Under the objective component of the Eighth Amendment conditions of confinement claim, the inmates had to claim that conditions deprived them of minimal civilized measures of life's necessities; however, because routine discomfort is part of the penalty that criminal offenders pay for their offenses against society and because prisoners are not constitutionally guaranteed comfortable prisons, a conditions of confinement claim must be based on extreme deprivations. (Cotton Regional Correctional Facility, Jackson, Michigan)

U.S. Appeals Court
CROWDING

Best v. Essex County, N.J. Hall of Records, 986 F.2d 54 (3rd Cir. 1993). A pretrial detainee sued a county, county executive and others under a civil rights statute after he was assaulted by another detainee in a jail day room. Summary judgment for the defendants was granted by the U.S. District Court and the plaintiff appealed. The court of appeals, affirming the decision, found that although the jail was overcrowded and the county was under direct court order to update the facility to alleviate overcrowding, the county and county executive were not liable under the civil rights statute for assault on the detainee when another detainee poured hot water from a coffee urn over him during

an altercation in the day room. Any possible connection between the conditions at the jail and the assault was too attenuated to allow recovery, as there was no demonstration of a connection between overcrowding and the assault or even allegations, absent the overcrowding, that the plaintiff would not have been with the assailant in the day room. (Essex County Jail Annex, New Jersey)

U.S. District Court
HANDICAPPED
INMATES
HEARING IMPAIRED

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. Supreme Court
SMOKE

Helling v. McKinney, 113 S.Ct. 2475 (1993). A prisoner brought a civil rights action against prison officials alleging violation of his Eighth Amendment rights due to his exposure to environmental tobacco smoke (ETS). The district court entered a directed verdict for the prison officials and the inmate appealed. Appeals courts modified the lower court decision, and the case was presented to the U.S. Supreme Court. The Supreme Court ruled that the inmate's Eighth Amendment claim could be based upon possible future harm to his health, as well as present harm, arising out of exposure to ETS. The Court found that the prisoner had stated a cause of action for violation of his Eighth Amendment rights, alleging that prison officials had, with deliberate indifference, exposed him to levels of environmental tobacco smoke that posed an unreasonable risk of serious damage. The court ordered the lower court, on remand, to consider the circumstances of the inmate's new prison location (where he was not longer exposed to a cellmate who smoked five packs of cigarettes a day), including non-smoking policies of this new location. The Court also ordered the lower court to consider the subjective element, deliberate indifference, in light of the officials' current attitudes and conduct, which may have changed materially because of the transfer of the inmate to a facility that has a smoking policy. (Nevada Department of Prisons)

U.S. Appeals Court
CLOTHING
DISCIPLINE
EXERCISE
FOOD
SHOWERS

LeMaire v. Maass, 12 F.3d 1444 (9th Cir. 1993). An inmate brought a civil rights action alleging unconstitutional conditions of his imprisonment in a disciplinary segregation unit. The U.S. District Court granted injunctive relief, and the prison superintendent appealed. The appeals court, vacating and remanding, found that "wantonness" in the infliction of deprivations on the inmate, which had to be established in order to prove cruel and unusual punishment, consisted of acting maliciously and sadistically for the very purpose of causing harm, rather than merely acting with deliberate indifference. In addition, none of the challenged practices, including controlled feeding status, use of restraints in showers, curtailment of outside exercise privileges, use of quiet cells, use of in-cell restraints, and removal of clothing, were unnecessary or imposed on the inmate maliciously or sadistically for the purpose of causing harm. (Oregon State Prison)

U.S. District Court
HOT WATER
SEGREGATION

Matthews v. Peters, 818 F.Supp. 224 (N.D.Ill. 1993). A prison inmate brought an action against employees of the Department of Corrections charging that defendants violated his constitutional rights by depriving him of hot water in his cell for a period of seven months while segregated. On the defendants' motion for judgment on pleadings, the district court

found that the prison officials would not be relieved on qualified immunity grounds from having to defend the inmate's lawsuit in view of a showing of deliberate indifference by prison officials in the refusal to cure readily remediable conditions. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
HARASSMENT
THREATS

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. District Court
PLUMBING

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

U.S. Appeals Court
EQUAL
PROTECTION

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
DOUBLE CELLING
FLOOR-SLEEPING

Newkirk v. Sheers, 834 F.Supp. 772 (E.D. Pa. 1993). Pretrial detainees brought a suit against a local government and prison officials in their official and individual capacities alleging violation of their constitutional rights. On cross motions for summary judgment, the district court found that the county prison warden and deputy warden did not have qualified immunity from liability for double-celling detainees in cells designed for one inmate and forcing detainees to sleep on mattresses on the cell floors for a period greater than a few days. The district court also found that the double ceiling of the detainees in other than exigent circumstances violated their due process rights. (Schuylkill County Prison, Pennsylvania)

U.S. Appeals Court
DOUBLE CELLING

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 that double ceiling did not rise to a level of cognizable Eighth Amendment deprivation. The inmate failed to present any evidence that he had sustained serious or significant physical or emotional injury because of such conditions. (Portsmouth City Jail, Virginia)

U.S. District Court
CELLS
HYGIENE
PLUMBING

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

- U.S. District Court
FOOD
PRETRIAL
DETAINEES
VENTILATION
- Tucker v. Randall, 840 F.Supp. 1237 (N.D.Ill. 1993). A former pretrial detainee brought a Section 1983 action against officers of a sheriff's department alleging inadequate jail conditions. The district court dismissed, and the detainee appealed. The appeals court found that the alleged intensely cold and hot temperatures in the detainee's cell, and alleged lack of food in the jail, did not meet "deliberate indifference" or "malicious motives" standards so as to defeat the qualified immunity defense asserted by the sheriff's department officials. Attempts to remedy prison conditions, including the use of a space heater, giving the defendant an extra blanket and clothes to wear, installing fans and opening windows, and giving the detainee extra snacks, showed something less than a criminally reckless or malicious state of mind. (Kendall County Jail, Illinois)
- U.S. District Court
PRETRIAL
DETAINEES
SANITATION
- Walton v. Fairman, 836 F.Supp. 511 (N.D. Ill. 1993). Pretrial detainees brought a pro se Section 1983 action against corrections officials and a sheriff alleging that conditions of confinement violated their due process rights. The defendants moved to dismiss. The district court found the pretrial detainees sufficiently alleged facts in their civil rights complaint to show that conditions of confinement in the county jail violated their due process rights so as to survive a motion to dismiss. The detainees alleged that rats bit them and one claimed that a swarm of mice attacked him. The alleged bites and attacks took place in about a month and a half time span. The detainees alleged that they told officials about the large nest of rats and mice and that the officials did not exterminate or make any efforts to rid the jail of the vermin. (Cook County Jail, Illinois)
- U.S. Appeals Court
DISCIPLINE
SANITATION
SEGREGATION
- White v. Nix, 7 F.3d 120 (8th Cir. 1993). An inmate brought a civil rights suit against prison officials arising from his confinement in a screened prison cell for eleven days. The U.S. District Court entered judgment for the officials, and the inmate appealed. The court of appeals, affirming the decision, found that the confinement of the inmate in the screened cell for eleven days when he was issued a disciplinary notice was not cruel and unusual punishment so as to deprive the inmate of his Eighth Amendment rights. The cell was equipped with a toilet, sink with hot and cold water, bed, and table, and was wired for cable television, although the furniture was bolted to the floor and screen mesh covered the bars of the cell. If the inmate had complained about the condition of the cell, he would have been provided with cleaning materials in order to correct the alleged unsanitary conditions. (Iowa State Penitentiary, Fort Madison, Iowa)
- 1994
- U.S. Appeals Court
CELLS
HEATING
- Del Raine v. Williford, 32 F.3d 1024 (7th Cir. 1994). A prison inmate brought a civil rights action against prison employees. The U.S. District Court dismissed the action and the inmate appealed. The appeals court found that genuine issues of material fact regarding whether prison officials failed to provide heat and shelter for the inmate precluded summary judgment for the prison employees. The inmate alleged that broken windows in his cell were not fixed despite his requests to prison officials and that the temperature in his cell was not much higher than the outside temperature which was 40 or 50 degrees below zero with the windchill. (United States Penitentiary, Marion, Illinois)
- U.S. Appeals Court
CROWDING
POPULATION
- Harris v. Angelina County, Tex., 31 F.3d 331 (5th Cir. 1994). In a prisoner class action under Section 1983 challenging conditions at a county jail, the U.S. District Court found conditions to be unconstitutional and granted injunctive relief in the form of a population cap. Appeal was taken. The appeals court, affirming the decision, found that evidence supported the finding that population exceeding 111 led to denial of basic human needs of both convicted felons and pretrial detainees. In addition, evidence supported a finding that the county was aware of the overcrowding and the resulting conditions. Evidence showed that the county could and had in the past taken some steps to relieve overcrowding, and, even if a cost defense was cognizable, it was inapplicable in the absence of any evidence that additional funding was unavailable from taxpayers to address overcrowding. (Angelina County Jail, Texas)
- U.S. District Court
FLOOR-SLEEPING
PRETRIAL
DETAINEES
- Hines v. Sheahan, 845 F.Supp. 1265 (N.D.Ill. 1994). A pretrial detainee brought a Section 1983 action for alleged constitutional deprivations suffered while incarcerated. On the defendants' motion to dismiss for failure to state a claim, the district court found that the pretrial detainee's complaint alleging that he was required to sleep on a mattress on the floor with rats and roaches failed to state a due process claim based on unconstitutional conditions of confinement. The complaint did not set forth facts that would support a claim of deliberate indifference, and failed to allege facts indicating what harm the detainee suffered. (Cook County Jail, Illinois)
- U.S. District Court
SMOKE
- Jackson v. Berge, 864 F.Supp. 873 (E.D. Wis. 1994). An inmate brought a Section 1983 action for injunctive and monetary relief against prison officials for allegedly violating his civil rights when they placed him in a cell with a prisoner who smoked. The prison officials' filed a motion for summary judgment. The district court, granting the motion,

found that the inmate did not satisfy the objective component of the cruel and unusual punishment test based on his confinement with a cellmate who smoked. He produced no competent evidence that he had a serious medical condition, or that second-hand smoke caused or aggravated any illness. In addition, he produced no evidence of the level of environmental tobacco smoke in his cell. The court also found that the inmate failed to establish that the prison officials acted with deliberate indifference in violation of the prohibition on cruel and unusual punishment in placing him in a cell with a roommate who smoked. Emergency overcrowding required housing in double rooms and the cell was designated a nonsmoking cell. Furthermore, the officials investigated the inmate's complaints, but they found no evidence of any smoking in the cell. They also provided the inmate with medical care every time he complained of chest pains or breathing problems. (Fox Lake Correctional Institution, Fox Lake, Wisconsin)

U.S. District Court
SANITATION

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 the prisoner failed to state an Eighth Amendment claim based upon inadequate sanitation. The prisoner's allegations that he was provided only with a sponge and mop once a week and a "duster" twice a week, and that he was never supplied with soap, detergents or disinfectants, did not allege that the prisoner had been deprived of a minimal civilized measure of life's necessities. (Alger Maximum Correctional Facility, Munising, Michigan)

U.S. District Court
CELLS
SEGREGATION

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
ASBESTOS
CRUEL AND
UNUSUAL
PUNISHMENT
SAFETY

McNeil v. Lane, 16 F.3d 123 (7th Cir. 1994). A state prisoner filed a Section 1983 suit, alleging prison officials violated his right under the Eighth Amendment to be free from cruel and unusual punishment by placing him in a cell within close proximity to asbestos covered pipes. The U.S. District Court dismissed the complaint for failure to state a claim, and the inmate appealed. The appeals court, affirming the decision, found that the allegations that the defendants allowed asbestos-covered pipes to exist directly outside of the inmate's cell, and that the defendants told the inmate that they could not transfer him to another cell, did not establish that the defendants acted with minimum level of culpability sufficient to trigger Eighth Amendment protection. In addition, the complaint did not allege facts sufficient to establish that conditions were serious enough to be considered cruel and unusual, in the absence of an allegation that the inmate was exposed to unreasonably high levels of asbestos. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
BEDDING
CONDITIONS
HEATING
SHOWERS
VENTILATION

Miller v. Fairman, 872 F.Supp. 498 (N.D. Ill. 1994). A pretrial detainee brought a civil rights action against jail administrators and jail guards alleging that conditions of his confinement violated his due process rights. The district court found that the pretrial detainee's allegations that heating and ventilation were inadequate during his stay at the county jail were sufficient to state a civil rights claim based on a violation of his Fourteenth Amendment due process rights. In addition, the detainee's allegations that he was provided with a wet mattress infested with insects and mice, that the showers at the jail were filthy and that the washroom facility sprayed water on inmates, were sufficient to state a civil rights claim based on a due process violation. (Cook County Jail, Illinois)

U.S. District Court
CELLS
PLUMBING
SANITATION
SHOWERS
TOILETS

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

U.S. District Court
BEDDING
HYGIENE
ISOLATION
LIGHTING
MEDICAL CARE
PROGRAMS
TRANSFERS

Taifa v. Bayh, 846 F.Supp. 723 (N.D.Ind. 1994). Prisoners brought a class action suit challenging conditions of confinement at a prison operated by the Indiana Department of Corrections. The district court approved a settlement agreement involving assignment and transfer of prisoners, along with improvement of various prison conditions at the Maximum Control Complex (MCC). The state agreed only to assign prisoners to MCC under specified conditions and to transfer prisoners out of MCC after a specified period of time, subject to certain conditions, and agreed to alter MCC conditions in many areas. The agreement provided for: a commissary with a list of particular items to be made available; inmate access to radios and televisions under specified conditions and at inmate expense; expanded visitation and telephone privileges; availability of additional reading materials; increased opportunities for prisoner recreation; an expanded law library; increased educational and substance abuse programs; expanded provisions for medical care including mandatory psychiatric evaluations for all prisoners upon their admittance; improvements in the condition of bedding; a decrease in the intensity of the 24-hour lights in the cells; increased privileges with respect to keeping personal property in cells and the storage room; and additional access by prisoners to personal hygienic items. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)

U.S. Appeals Court
CAPACITY
CROWDING
POPULATION
STAFFING

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

U.S. District Court
HANDICAPPED
INMATES

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. Appeals Court
CONDITIONS
CRUEL AND
UNUSUAL
PUNISHMENT
PRETRIAL
DETAINEES
SANITATION

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

U.S. District Court
CRUEL AND
UNUSUAL
PUNISHMENT
HEATING
HYGIENE
SANITATION

Wilson v. Schomig, 863 F.Supp. 789 (N.D. Ill. 1994). A prisoner brought a civil rights action against prison officials based on alleged violations of the Eighth Amendment. The district court found that the inmate's claims that his cell contained dirt, dust, and roaches, and that the ceiling leaked during rainstorms did not allege conditions sufficiently serious to violate the objective standard of cruel and unusual punishment and did not state a claim based on the Eighth Amendment. However, the prison officials were not entitled to qualified immunity from the inmate's claim that they failed to clean up or allowed him to clean up human feces from his cell and a claim that the temperature in his cell fell below freezing during three days in January. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
HEATING

Winston v. Campbell, 868 F.Supp. 1242 (D.Kan. 1994). A former inmate of a county jail filed a civil rights complaint. The district court found that the jail inmate was not subject to a constitutional deprivation because of a rule forbidding the taking of blankets into dayrooms, which allegedly were unreasonably cold. Temperature logs showed a normal and routine practice of providing a reasonable and, as far as practical, comfortable level of heating in the jail. (Leavenworth County Jail, Kansas)

U.S. Appeals Court
CELLS
SAFETY

Anderson v. County of Kern, 45 F.3d 1310 (9th Cir. 1995). Pretrial detainees and convicted prisoners brought an action against prison officials under Section 1983. The U.S. District Court refused to enjoin prison officials from placing mentally disturbed or suicidal prisoners in safety cells. The detainees and prisoners appealed. The appeals court found that the district court did not err in refusing to enjoin the county from ever making use of safety cells for mentally disturbed or suicidal prisoners. There was ample testimony that some prisoners became so violent and such a danger to themselves that temporary placement in a safety cell was needed to deprive the prisoners of all means of harming themselves. The fact that some prisoners who were violent might be mentally disturbed or suicidal did not detract from the need. The deprivation of sinks, stand up toilets, and beds for short periods of time during violent episodes was constitutionally justifiable because the inmates were confined to the safety cells only for short periods of time. (Kern County Jail, California)

U.S. District Court
CROWDING
CRUEL AND
UNUSUAL
PUNISHMENT
FLOOR- SLEEPING
HEATING
TOTALITY OF
CONDITIONS

Askev v. Fairman, 880 F.Supp. 557 (N.D. Ill. 1995). An inmate sued a county department of corrections and correctional officers under Section 1983 alleging violation of the Eighth Amendment. On the defendants' motion to dismiss, the district court found that although the inmate was forced to sleep on the floor at various times during his incarceration in the jail, that mice, roaches, and other vermin were constantly roaming around the floor, that the floor temperature was approximately 35 degrees during the winter months, and that the county jail was overcrowded, these conditions did not constitute "cruel and unusual punishment" in violation of the Eighth Amendment. The conditions did not result in a serious deprivation of basic human needs and the conditions did not deprive the inmate of the minimal civilized measure of life's necessities. In addition, the court found that the inmate's claim that he filed a grievance requesting remedies for the conditions of confinement and nothing was done to remedy the situation was an insufficient basis on which the court could conclude that the prison officials knew of and disregarded the excessive risk to the inmate's health and safety for purposes of a Section 1983 action. The inmate's allegation that he slept on the floor of a jail cell did not state a claim for conspiracy between correctional officers and the county department of corrections, absent any showing that an agreement existed between the department of corrections and the correctional officers. Furthermore, the jail supervisors' failure to deal with the overcrowding problem at the correctional facility did not constitute a decision or custom for purposes of an official capacity claim under Section 1983 based on allegations that the inmate was required to sleep on the floor, absent an allegation that supervisors approved or condoned any policy or regulation promoting inmates sleeping on the floor during the winter months, that supervisors were personally involved in having inmates sleep on the floor, or that there was a pattern of conduct by supervisors to allow inmates to sleep on the floor. (Cook County Department of Corrections)

U.S. District Court
HYGIENE
SANITATION

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 and a county for alleged harassment. On a motion for summary judgment by the county, the district court found that, even taken as true, allegations that the detainee was denied access to shaving, haircuts, and finger and toe nail cutting, was verbally harassed by jail guards, was forced to use disposable eating utensils, was forced to wash his own clothes, and was forced to use showers in which unnamed persons had urinated did not demonstrate that the county violated his due process rights for failure to provide reasonably adequate hygiene and sanitation conditions. (Cameron County Jail, Texas)

U.S. District Court
HANDICAPPED
INMATES

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
OUT OF CELL TIME
EXERCISE
SEGREGATION

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
PLUMBING
SANITATION
TOTALITY OF
CONDITIONS

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

U.S. District Court
ASBESTOS

Gonyer v. McDonald, 874 F.Supp. 464 (D. Mass. 1995). Inmates filed a Section 1983 action against prison officials, alleging that exposure to asbestos in prison eating and living facilities was cruel and unusual punishment in violation of the Eighth Amendment. The district court found that allegations of free-floating asbestos fibers in prison and related citations for violations of state health codes sufficiently demonstrated the objective seriousness of prison officials' actions to state a cognizable claim. In addition, an allegation of the chief prison official's knowledge for several years of the presence of asbestos in violation of health codes sufficiently demonstrated the subjective culpability of prison officials to state a cognizable claim. The assertion that exposure to asbestos would cause cancer stated a cognizable claim even though inmates had not yet contracted cancer. (Franklin County House of Correction, Massachusetts)

U.S. District Court
CLOTHING
CROWDING
FLOOR-
SLEEPING
SANITATION

Landfair v. Sheahan, 878 F.Supp. 1106 (N.D. Ill. 1995). A former pretrial detainee at a county jail brought a pro se civil rights complaint against a sheriff and various corrections officials complaining of conditions at the jail. On a motion to dismiss, the district court found that the plaintiff sufficiently stated a claim against the sheriff in his individual capacity with respect to jail conditions, as it was reasonable that the sheriff was aware of the overcrowding at the county jail and the problems which accompanied it. In addition, the detainee stated a claim against the executive director of the county department of corrections and the superintendent of the county jail, by arguing that they were aware of the jail conditions since the detainee submitted grievance reports to them and they visited his wing periodically. A claim was also stated with respect to the allegation that the plaintiff contracted meningitis as a result of being required to sleep on the floor of his cell. A claim was stated with

respect to the alleged lack of cleaning supplies, clean clothing and linen. However, a claim was not stated with respect to shower conditions, medical treatment, alleged unsanitary food, exposed electrical wires, or retaliation by a correction officer. (Cook County Jail, Illinois)

U.S. District Court
ISOLATION
IDLENESS
SEGREGATION
PSYCHIATRIC CARE

Madrid v. Gomez, 889 F.Supp. 1146 (N.D.Cal. 1995). Inmates brought a class action suit challenging conditions of confinement at a new high-security prison complex in California. The district court found for the plaintiffs in the majority of issues presented, ordered injunctive relief and appointed a special master to direct a remedial plan tailored to correct specific constitutional violations. In the beginning of its lengthy opinion, the court noted that this "...is not a case about inadequate or deteriorating physical conditions...rather, plaintiffs contend that behind the newly-minted walls and shiny equipment lies a prison that is coldly indifferent to the limited, but basic and elemental, rights that incarcerated persons--including the 'worst of the worst'--retain under...our Constitution." The court held that the fact that a prison may be new does not excuse its obligation to operate it in a constitutionally acceptable manner.

The court held that prison inmates established prison officials' deliberate indifference to the use of excessive force by showing that they knew that unnecessary and grossly excessive force was being employed against inmates on a frequent basis and that these practices posed a substantial risk of harm to inmates. According to the court, officials consciously disregarded the risk of harm, choosing instead to tolerate and even encourage abuses of force by deliberately ignoring them when they occurred, tacitly accepting a code of silence, and failing to implement adequate systems to control and regulate the use of force. The court found that officials had an affirmative management strategy to permit the use of excessive force for the purpose of punishment and deterrence.

The court found the delivery of physical and mental health services to be constitutionally inadequate and that evidence demonstrated that officials knew that they were subjecting the inmate population to a substantial risk of serious harm, thus violating the Eighth Amendment. The court held that staffing levels were insufficient, training and supervision of medical staff was almost nonexistent and screening for communicable diseases was poorly implemented. Inmates often experienced significant delays in receiving treatment, there were no protocols or training programs for dealing with emergencies or trauma, there was no effective procedure for managing chronic illness, medical recordkeeping was deficient, and there were no programs of substance to ensure that quality care was provided.

According to the court, although conditions of confinement in the security housing unit did not violate the Eighth Amendment for all inmates, they did violate constitutional standards when imposed on certain inmates, including those who were at a particularly high risk for suffering very serious or severe injury to their mental health. The court found that conditions involved extreme social isolation and reduced environmental stimulation. The court held that prison officials had an actual subjective knowledge that conditions of isolation presented a substantial excessive risk of harm for mentally ill and other vulnerable inmates, and that the officials acted wantonly in violation of the Eighth Amendment.

The court ruled that the psychological pain that results from idleness in segregation is not sufficient to implicate the Eighth Amendment, particularly where exclusion from prison programs is not without some penological justification.

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. (Pelican Bay State Prison, California)

U.S. District Court
BEDDING
USE OF FORCE

Maguire v. Coughlin, 901 F.Supp. 101 (N.D.N.Y. 1995). A former inmate sued corrections officials to recover for alleged verbal and physical abuse, inadequate cell conditions, and transfers. The district court granted summary judgment for the defendants, in part, and denied it in part. The court found that the alleged verbal and physical abuse was not cruel and unusual punishment since officers did not apply force maliciously and sadistically to cause harm and did not use more than de minimus force. The court found that questions of fact precluded summary judgment on the claim that the former inmate's confinement in a cell without bed linens violated the Eighth Amendment. Because an inmate's Eighth Amendment right to adequate cell conditions was clearly established at the time of the alleged violations, the court held that the defendants were not entitled to qualified immunity. (Downstate Correctional Facility, New York)

U.S. District Court
THREATS
MEDICAL CARE

Malsh v. Austin, 901 F.Supp. 757 (S.D.N.Y. 1995). An inmate brought a civil rights action against prison officials claiming that his Eighth and Fourteenth Amendment rights were violated by the rescheduling of a dental appointment. The court dismissed the case, finding that the inmate did not have a protected liberty interest in having his dental appointment on the day scheduled and that postponement of the appointment did not constitute cruel and unusual punishment. The court found that the inmate's claim that he was threatened with disciplinary action, physical violence, an extension of time in keeplock, and possible segregation if he continued to seek dental care, could not support a § 1983 action without any allegation of injury or damage. (Woodburne Correctional Facility, New York)

U.S. District Court
SANITATION
FIRE SAFETY
HYGIENE
TOILETS
ASBESTOS

Masonoff v. DuBois, 899 F.Supp. 782 (D.Mass. 1995). Prison inmates filed a class action suit against prison officials alleging that conditions of confinement violated their rights under the Eighth Amendment. The district court granted summary judgment, in part, for the inmates. The court found that the use of chemical toilets violated the Eighth Amendment rights of the inmates where the use and emptying of the toilets resulted in extremely unsanitary conditions, the toilets caused an unbearable stench, and prison inmates suffered numerous health problems caused by the use of toilets including nausea, burns, and rashes. The court also found that there were genuine issues of material fact as to whether prison officials acted with deliberate indifference regarding chemical toilets, precluding summary judgment. The court denied summary judgment for the prison officials with regard to fire safety issues raised by the inmates. Inmates alleged fire hazards caused by the lack of a functioning sprinkler system and the lack of automatic locks on cell doors, which are required by a state building code. Prison officials responded that the facility had implemented a rigorous fire safety program which mitigated any dangers imposed by these deficiencies. The court noted that while it may look to state codes in its effort to determine society's standard of decency, such standards do not necessarily reflect constitutional minima. The court found that the inmates' assertion that their exposure to asbestos fibers causes cancer stated a cognizable Eighth Amendment claim, precluding summary judgment. The court held that genuine issues of material fact precluded summary judgment on the allegation that pest or vermin infestation created inadequate sanitation in violation the Eighth Amendment. The court noted that infestation of vermin such as rats, mice, birds, and cockroaches in the prison is inconsistent with adequate levels of sanitation required by the Eighth Amendment. (Southeast Correctional Center, Massachusetts)

U.S. Appeals Court
SAFETY
SANITATION

Morissette v. Peters, 45 F.3d 1119 (7th Cir. 1995). An inmate sued a prison and prison officials for violations of Section 1983 based on confinement stemming from alleged drug possession in prison. The U.S. District Court granted summary judgment to the defendants and the inmate appealed. The appeals court found that the prison officials could not be liable under the Eighth Amendment for denying humane conditions of confinement absent a showing that the officials were even remotely aware of the alleged unsanitary conditions in the cell in which the inmate was confined. Even if the guards were aware of the exposed wires in the cell and failed to fix the problem during the inmate's brief stay in controlled segregation, the guards were only guilty of negligence which would not support an Eighth Amendment claim. (Pontiac Correctional Facility, Illinois)

U.S. District Court
BEDS
CONDITIONS
MEDICAL CARE

Oldham v. Chandler-Halford, 877 F.Supp. 1340 (N.D. Iowa 1995). An inmate brought a Section 1983 action based on a variety of complaints including a lack of medical treatment and poor living conditions. The district court found that even if a medical restriction on the inmate's activity could establish a property interest, medical restrictions on the inmate as a result of an injured wrist did not establish a property interest in a top bunk assignment. "Lower bunk only" assignment was not marked on the inmate's medical restrictions. Even if there were such a property interest, the assignment to a different bunk did not show deliberate indifference to a serious medical need. (Iowa Mens Reformatory, Anamosa, Iowa)

U.S. Appeals Court
SMOKE

Weaver v. Clarke, 45 F.3d 1253 (8th Cir. 1995). An inmate brought a Section 1983 civil rights claim alleging that prison officials unconstitutionally exposed the inmate to environmental tobacco smoke. The U.S. District Court denied a motion to dismiss by prison officials on the grounds that the inmate stated a claim despite an asserted qualified immunity defense. Appeal was taken. The appeals court, affirming the decision, found that the alleged unwillingness to enforce a smoking ban in the inmate's room was deliberate indifference to the inmate's medical problems. The inmate had a clearly established right to be free of the existing serious medical condition caused by tobacco smoke exposure. (Lincoln Correctional Center, Lincoln, Nebraska)

U.S. District Court
VENTILATION
TEMPERATURE
SANITATION

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. District Court
CROWDING
SANITATION
VENTILATION
CLOTHING
EXERCISE
FLOOR-SLEEPING

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

U.S. District Court
FLOOR-SLEEPING
FOOD
SANITATION
CROWDING

Summers v. Sheahan, 883 F.Supp. 1163 (N.D.Ill. 1995). An inmate filed a pro se suit against jail officials, seeking compensatory and punitive damages for alleged violations of his constitutional rights. The district court dismissed the action. The court held that the inmate's allegation that he contracted bronchitis because he did not receive his heart medicine failed to state an Eighth Amendment claim absent allegations that jail officials were aware of his condition or that they deliberately withheld his medication. The court also held that failure of the officials to authorize the inmate's overnight stay at a county hospital was not a violation of his rights because the inmate was placed in the jail hospital where he was observed overnight as recommended by the county physician. The inmate alleged he was forced to sleep on cold floors for approximately two months, but the court found this was an inevitable consequence of overcrowding rather than punishment and represented a "temporary inconvenience" rather than a violation of his rights; jail officials were also not liable for failing to deal with the overcrowding problems at the jail. The court found that the inmate's allegations of vermin-infested food rose to the level of a constitutional violation but jail officials were not shown to have been deliberately indifferent. The inmate's allegations that he was forced to stay in an unsanitary, germ- and bacteria-filled environment, and that showers were filthy and clogged, failed to state a claim for violation of the Eighth Amendment. (Cook County Jail, Illinois)

U.S. District Court
FLOOR-SLEEPING
CROWDING

Ware v. Fairman, 884 F.Supp. 1201 (N.D.Ill. 1995). An inmate brought a pro se § 1983 action against county officials seeking compensatory and punitive damages for alleged violations of his constitutional rights. The district court granted the defendants' motion to dismiss. The conditions that the inmate complained of--sleeping on the floor inside a cold cell for one week--although uncomfortable, were at most temporary and were therefore not serious enough to be considered cruel and unusual punishment. The court noted that nothing in the Constitution requires elevated beds for prisoners. The inmate's claims that he had not had a change of uniform or sheets from the time of his arrival, and that his tier was infested with roaches, water bugs, fruit flies and mice failed to state an Eighth Amendment claim without a factual basis supporting the inference that the defendants maintained the conditions to punish the inmate. The court also noted that failure of prison officials to keep vermin under control in a crowded jail does not violate the Constitution. (Cook County Dept. of Corrections, Illinois)

U.S. Appeals Court
BEDDING
CELLS
CLOTHING

Williams v. Delo, 49 F.3d 442 (8th Cir. 1995). An inmate brought a Section 1983 action against prison officials alleging that conditions of his confinement in a strip cell violated the Eighth Amendment, seeking damages and injunctive relief. The U.S. District Court denied the prison officials' motion for summary judgment and the officials appealed. The appeals court, reversing and remanding with instructions, found that the officials were entitled to qualified immunity as to the inmate's damages claim. While the inmate did not have clothing or bedding, he was given three meals a day, including milk, and was sheltered from the elements. He did not show that any of the prison officials named as defendants knew of and disregarded an excessive risk to his health or safety. The inmate also failed to show that prison officials knowingly disregarded, were disregarding, and would continue to disregard an objectively intolerable risk of harm to his health or safety, as required to prevail on a claim for injunctive relief. (Potosi Correctional Center, Missouri)

U.S. District Court
FOOD
HYGIENE
MEDICAL CARE
VENTILATION

Wilson v. Cook County Bd. of Commissioners, 878 F.Supp. 1163 (N.D. Ill. 1995). A pretrial detainee brought a Section 1983 action against detention facility officials and a county board of commissioners alleging due process violations. On the defendants' motions to dismiss the district court found that the failure to allege remedial injury warranted the dismissal of claims alleging overcrowding, inadequate staffing, inadequate opportunity for exercise, and inadequate grievance procedures. However, the court found that the pretrial detainee's allegations that the detention facility failed to provide clean sheets, clothing, and a towel, had a limited number of toilets, showers, and sinks, and lacked sufficient toilet paper, soap, and cleaning materials stated a claim for violation of due process, where these conditions were probably not reasonably related to any legitimate government objective. The detainee's

allegation that the facility lacked adequate ventilation was sufficient to state a claim for due process violation. The detainee's allegation that the detention facility failed to treat the detainee's back injury and that the facility's officials were aware that the detainee's sleeping conditions could adversely affect the injury also stated a claim for violation of due process. The pretrial detainee's allegation that the detention facility served inadequate food under unsanitary conditions and that facility officials were aware of such conditions and the fact that the conditions created an excessive risk to the detainee's health and safety stated a claim for violation of due process. The detainee's allegation that the board of commissioners failed to appropriate and provide funds sufficient to improve the conditions at the detention facility, despite its knowledge of unconstitutional conditions at the facility, and that the board was deliberately indifferent to the excessive risk created by the conditions, adequately stated a due process claim against the board. (Cook County Jail, Illinois)

1996

U.S. Appeals Court
BEDDING
SANITATION
FOOD
EXERCISE
LIGHTING
NOISE
TEMPERATURE

Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower court by finding that several allegations were sufficient to state claims. The appeals court found that the inmate's allegations of deliberate indifference to prolonged pest infestation at the jail were sufficient to state a § 1983 claim. The inmate admitted that the jail had been sprayed twice by a pest control service during a 16-month period, but he alleged that cockroaches were everywhere and that roaches and mice crawled over him and constantly awakened him. The inmate's allegations that food was rancid and nutritionally deficient were also sufficient to state a claim. The inmate's allegation that his health and well being deteriorated while confined because of inadequate exercise also stated a § 1983 claim. The inmate alleged that he was restricted to his cell or unit for extended periods of time and had insufficient space to exercise in his unit. His claims that his pleas for psychological treatment were ignored and that he was deprived of necessary medication were also sufficient to overcome a motion to dismiss. The court found that although the inmate had no right to leave his cell to go to a general reading library, his allegation of denial of access to reading materials and inadequate lighting for reading in the jail stated a § 1983 claim. The inmate's claim of excessive noise in the jail also stated a § 1983 claim. He alleged that noise occurred every night--often all night--and interrupted or prevented his sleep. He also stated a claim by alleging that he was denied protection from cold temperatures in the jail by the jail staff's failure to provide him with blankets. (Cook County Jail, Illinois)

U.S. District Court
NOISE
SEGREGATION
SANITATION

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
SMOKE

Crowder v. Kelly, 928 F.Supp. 2 (D.D.C. 1996). Inmates who were nonsmokers brought an action against prison officials alleging they were subjected to high levels of environmental tobacco smoke (ETS) in violation of the Eighth Amendment. The district court granted the inmates' motion for a preliminary injunction, finding that the inmates were likely to succeed on their claim and that they would suffer irreparable injury if their exposure to ETS was not enjoined. The inmates had described a pattern of disregard for the prison's non-smoking policy by both the prison population and the corrections department. According to the court, evidence indicated that the inmates' involuntary exposure to ETS could have both long-term and short-term effects on their health, including coughing, chest discomfort, phlegm production and elevated risk of lung cancer and heart disease. (District of Columbia, Lorton Correctional Complex, Virginia)

U.S. District Court
CLOTHING

Davidson v. Coughlin, 920 F.Supp. 305 (N.D.N.Y. 1996). A state prison inmate filed a § 1983 action against prison officials alleging conditions that violated the Eighth Amendment. The court found that summary judgment for the defendants was precluded on the inmate's claim that prison officials failed to provide him with adequate winter clothing. The officials alleged that the inmate was provided with the clothing mandated by state corrections directives; the inmate alleged that they failed to provide inmates with various items of clothing, including winter underwear, winter boots or galoshes, sweaters, gloves, scarves and wool socks. The inmate alleged that some of these items were available for purchase only. (Auburn Correctional Facility, New York)

U.S. District Court
CLOTHING
EXERCISE

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 granted the motion with regard to the prison's alleged failure to provide warm clothing for inmates who wished to participate in outdoor exercise. The court found that it was likely the prisoner would demonstrate that he was unconstitutionally denied the opportunity for outdoor exercise. Prison officials did not dispute the prisoner's allegations that prisoners such as himself who were housed in a special housing unit were issued only summer weight clothing and nonwaterproof footwear, and that the prisoners of that unit shared "community" lightweight jackets. The district court stated that refusing to provide adequate clothing for outdoor exercise during cold weather was tantamount to refusing to provide outdoor exercise, which would constitute cruel and unusual punishment. (Auburn Correctional Facility, New York)

U.S. District Court
DOUBLE CELLING
CLASSIFICATION

El Tabech v. Gunter, 922 F.Supp. 244 (D.Neb. 1996). Inmates sued corrections officials alleging that the practice of double celling inmates with random cell assignment violated the Eighth Amendment. The district court ordered remedial measures and the officials appealed; the appeals court remanded the case for certification of findings. On remand, the district court held that evidence was sufficient to find that prison officials actually knew of and disregarded the substantial risk to the safety of inmates posed by making random double cell assignments without the use of classification information and without determining inmate compatibility. The court noted that evidence supported the conclusion that the level of violence at the penitentiary, including violence in double cells, posed a substantial risk of harm to inmates. The court found that remedial measures, such as cell moves, protective custody, or posting staff on a gallery, did not render the decision not to use classification information reasonable. The court found that evidence established that wardens were personally responsible for the failure to use classification information before making cell assignments. (Nebraska State Penitentiary)

U.S. Appeals Court
PRETRIAL DETAINEES
OUT OF CELL TIME
TOTALITY OF
CONDITIONS
FLOOR-SLEEPING
CELLS

Ferguson v. Cape Girardeau County, 88 F.3d 647 (8th Cir. 1996). A prison inmate filed civil rights claims and state law claims against county officials alleging violation of his constitutional rights when he was a pretrial detainee. The district court granted summary judgment for some defendants, and the appeals court affirmed in part and remanded in part. The court found that confinement of the pretrial detainee in a space of just over 30 square feet and the use of a floor mattress for 13 nights did not constitute "punishment" in violation of the detainee's due process rights. The court noted that the totality of circumstances supported the existence of a legitimate governmental interest, based on the short duration of confinement, the necessity to keep the detainee under observation for both his medical condition and safety concerns, and the amount of time he spent out of his cell. (Cape Girardeau County Jail, Missouri)

U.S. Appeals Court
PRETRIAL
DETAINEES

Hamilton v. Lyons, 74 F.3d 99 (5th Cir. 1996). A parolee who was detained for an alleged new offense brought a § 1983 action challenging conditions of confinement at a city jail. The district court dismissed the case as frivolous and the parolee appealed. The appeals court affirmed, ruling that the alleged conditions did not violate the Eighth or Fourteenth Amendments. The parolee had alleged that he was denied visitation, recreation, mail, legal materials, sheets, and showers for a three-day period, but the court found that the conditions were not unconstitutional and that the parolee presented no evidence that the defendants intended to punish the parolee for his pending charges. (DeSoto City Jail, Texas)

U.S. District Court
VENTILATION
NOISE
EXERCISE

Kropp v. McCaughtry, 915 F.Supp. 85 (E.D.Wis. 1996). A state inmate filed a § 1983 action against a prison warden and security director alleging cruel and unusual punishment in violation of his Eighth Amendment rights. The district court granted summary judgment for the prison officials, finding that construction of an expanded metal front on cell doors in the adjustment segregation unit did not violate the inmate's rights. Construction lasted for only five hours each day, prisoners were housed at least one cell removed from the work, the construction did not require the workers to wear gas masks and therefore the prisoners did not need them, and the inmates were supplied with ear plugs on request. The court also found that temporary denial of the inmate's outdoor exercise while outside recreation modules were being constructed did not violate the inmate's rights. The inmate was not denied the right to exercise in his cell and once he was transferred to the general population he was able to exercise outside several times a week. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
CROWDING
POPULATION

McClendon v. City of Albuquerque, 79 F.3d 1014 (10th Cir. 1996). After a class action suit was filed against a detention facility, the district court granted a preliminary injunction to reduce the population. The district court judge had made an unannounced visit to the facility, which was followed by a one-day evidentiary hearing. The preliminary injunction was converted into a permanent injunction based on a partial settlement agreement between the parties. The district court ordered the facility to reduce its inmate population according to a schedule of progressively decreasing population caps, and imposed detailed conditions concerning the day-to-day operation of the facility. To comply with the population caps, the order required the defendants to implement a "Matrix Release System" (MRS) which assigned a numerical score to each inmate, providing the basis for the release of selected prisoners when the population cap was exceeded. After using the MRS twice, the defendants decided to avoid exceeding the population caps by housing inmates in other facilities. The plaintiffs objected to the arrangements that were proposed (which included using tents, the basement of the courthouse, and re-opening a facility which had been closed) and filed suit. The judge imposed a condition which required the defendants to make any proposed site available to plaintiffs' counsel for

inspection; in the event of a dispute between the parties, the judge noted that he would be "happy to tour any other facilities that may be used as an interim measure." Local government officials and employees filed an application for an emergency stay of the order and a writ of prohibition seeking relief from the injunction. The district court had required prior court approval and inspection by inmates' counsel of any confinement facilities that were to be used other than the local detention center. The appeals court assigned the petition for writ to a panel for review, and granted a stay of the district court order, finding that the local officials had demonstrated the likelihood of success on appeal. The officials secured a stay of the order and eventually some of the elements of the decision were vacated when the City opened a new detention facility. (Bernalillo Co. Detention Ctr., New Mexico)

U.S. Appeals Court
CLOTHING
BEDDING
EXERCISE
HYGIENE
VENTILATION

Mitchell v. Maynard, 80 F.3d 1433 (10th Cir. 1996). A prisoner brought a § 1983 action against prison officials, claiming violation of his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments. The district court granted judgment for the defendants as a matter of law and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded the case for further proceedings. The appeals court found that judgment as a matter of law was precluded by genuine issues of fact regarding the prisoner's alleged conditions of confinement. The prisoner claimed that he was denied clothing and bedding, that he was subjected to temperatures in the mid-fifties, that he was deprived of exercise for an extended period of time, that there was a lack of hot water and adequate ventilation, that his prescription eyeglasses were removed and that he was denied writing utensils. These conditions, if proved at trial, may violate the prisoner's Eighth Amendment rights. (Mack Alford Corr. Center, Oklahoma)

U.S. District Court
PLUMBING
TOILETS

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
BEDDING
CLOTHING
DISCIPLINE
PUNITIVE
SEGREGATION
EXERCISE
VISITATION

O'Leary v. Iowa State Men's Reformatory, 79 F.3d 82 (8th Cir. 1996). Iowa inmates who were placed in a progressive four-day behavior management program filed suit under § 1983 alleging cruel and unusual punishment. The district court entered judgment for the defendants and the inmates appealed. The appeals court affirmed the lower court decision, finding that the inmates were not denied the minimal civilized measures of life's necessities. The court also found that there was no showing that prison officials were deliberately indifferent to an excessive risk to inmate health or safety. The inmates had received disciplinary reports and were placed in the behavior management program. On the first day of the program prisoners are deprived of underwear, blankets, mattresses, exercise and visits; prisoners are provided with normal diets, sanitation and hygiene supplies, and they may read their mail but they may not retain it. On the second and following days prisoners gradually regain the deprived items-- as long as they demonstrate satisfactory behavior. (Iowa State Men's Reformatory)

U.S. Appeals Court
SMOKE

Oliver v. Deen, 77 F.3d 156 (7th Cir. 1996). A state prison inmate sued prison officials seeking damages for alleged violation of his Eighth Amendment rights by housing him with smoking cellmates. The district court entered summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the inmate failed to demonstrate that he had a sufficiently serious medical need to implicate the Eighth Amendment or to provide the basis for an award of damages. The court noted that while the inmate was asthmatic and showed signs of discomfort and the prison doctor issued a permit to the inmate to have a nonsmoking cellmate, the inmate's medical records showed that his asthma was mild, that he never required outside hospitalization, and the only evidence of a causal relationship between smoke and the inmate's discomfort was a few general news articles which indicated that smoke could aggravate an asthmatic condition. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
SANITATION

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

U.S. Appeals Court
VENTILATION
FIRE SAFETY
SANITATION

Standish v. Bommel, 82 F.3d 190 (8th Cir. 1996). A former inmate brought a § 1983 action against prison officials challenging his conditions of confinement. The district court entered judgment against the inmate and he appealed. The appeals court affirmed the lower court decision, finding that the former inmate was not subjected to unconstitutional conditions of confinement. The inmate alleged that unsafe conditions at the prison included the lack of smoke detectors in the housing unit, lack of water sprinklers, inadequate ventilation, and insufficient emergency procedures. The court found that these conditions did not violate the

inmate's rights where the only recent fires were started when inmates set fire to mattresses or bedding and neither the former inmate or anyone else had been injured by smoke inhalation or fire. The court noted that prison officials had taken action to address fire hazards, such as prohibiting smoking. The court also found that the former inmate's rights were not violated when his housing unit leaked in bad weather, even though it forced him to move his mattress to the floor to stay dry. (Jefferson City Correctional Facility, Missouri)

U.S. Appeals Court
TOILETS
SANITATION

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. District Court
SMOKE

Warren v. Keane, 937 F.Supp. 301 (S.D.N.Y. 1996). Prisoners brought a § 1983 action against prison officials alleging that their exposure to environmental tobacco smoke (ETS) violated their Eighth Amendment rights. The district court denied the defendants' motion for summary judgment, finding a fact question as to whether the level of smoke permeating the prison was so severe as to be a danger to the health of prisoners. The court also found that a fact question as to whether a prison corrections officer and fire and safety officer were entitled to qualified immunity precluded summary judgment. The court ruled that supervisors did not have qualified immunity because they were chargeable with the knowledge of the conditions of the prison and with the knowledge that second-hand smoke could cause serious health problems. The prisoners alleged that smoke permeated the facility due to underenforcement, inadequate smoking rules, overcrowding, and poor ventilation. (Ossining State Correctional Facility, New York)

U.S. Appeals Court
CROWDING

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)

U.S. District Court
HEATING
CLOTHING
MEDICAL CARE

Young v. Breeding, 929 F.Supp. 1103 (N.D.Ill. 1996). An inmate brought an action against correctional officers, a warden, a nurse and a physician, alleging violation of his constitutional rights. The district court found that the inmate stated a claim against the nurse and correctional officers who allegedly refused to provide him with medical attention during an asthma attack, and against a warden who allegedly ordered the transfer of the inmate to a psychiatric center. The court also found that the inmate stated an Eighth Amendment claim regarding his confinement in a hospital unit's strip cell for approximately 20 days, where he was stripped and forced to endure the cold temperature of his cell and had to wrap himself in toilet paper to stay warm. The court found that the inmate stated a claim against a physician who allegedly forcibly medicated the inmate against his will each time the inmate requested to be released from the strip cell. Officers allegedly sprayed the inmate with mace and refused to provide him with medical attention. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
 SEGREGATION
 CLOTHING
 EXERCISE
 FOOD
 SANITATION
 HEATING
 TEMPERATURE

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
 FLOOR-SLEEPING
 CROWDING
 CELL CAPACITY
 CLASSIFICATION
 PLUMBING
 VENTILATION
 SANITATION
 MEDICAL CARE

Carty v. Farrelly, 957 F.Supp. 727 (D.Virgin Islands 1997). Detainees and inmates housed in a criminal justice complex asked the court to find officials in civil contempt of a consent decree. The district court found that the consent decree comported with the principles of the Prison Litigation Reform Act (PLRA) because it was narrowly drawn, extended no further than necessary to correct the violation of federal rights, and was the least intrusive means necessary to correct the violations. The court found the officials in contempt for failing to comply with the terms of the consent decree, and continued noncompliance with a court order requiring officials to pay detainees' and inmates' attorney fees. The officials admitted they never fully complied with the order and failed to make meaningful progress toward reducing the inmate population. The court found that conditions in the criminal justice complex continued to violate the Eighth Amendment, where the complex housed an average of 168-190 prisoners in a facility designed 51 short-term detainees, five or six persons were often housed in a single cell, single cells housed two or more prisoners, and prisoners slept on mattresses on the floor. Crowding was so severe that prisoners sleeping on the floor often had to sleep with their heads against a toilet, resulting in inmates urinating on one another during the night. The disrepair of plumbing, heating, ventilation and showers effected the sanitation and health of inmates in violation of the Eighth Amendment.

According to the court, medical care was inadequate in violation of the Eighth Amendment, where an on-site nurse and physician and two part-time nurses serviced 168 to 190 prisoners, sick call was administered by prison security staff instead of medical staff, prisoners were not seen promptly as needed, the facility did not maintain adequate equipment for emergencies, personal hygiene items were not routinely distributed, intake health evaluations were inadequate, and the facility failed to offer outdoor access to all inmates.

The court cited "abominable" treatment of mentally ill inmates at the facility. Mentally ill inmates were housed together in clusters with often four or five inmates per cell, the majority of inmate assaults occurred in the clusters, and correctional staff taunted mentally ill inmates, rewarding them with cigarettes after instructing them to pull down their pants and hold their crotch, or crawl across the floor. According to the court, when overcrowding and commingling of mentally ill inmates with the general population contributes to inmate-to-inmate violence, the failure to remedy the situation constitutes deliberate indifference to the inmates' basic safety and security in violation of the Eighth Amendment. The court held that officials may not use restraints on mentally ill inmates as matter of course, but may restrain them only under special circumstances. The court also cited the failure of officials to house inmates according to an objectively based classification system and the failure to maintain separate housing for violent inmates. (Criminal Justice Complex, St. Thomas, Virgin Islands)

U.S. District Court
 HYGIENE
 USE OF FORCE

Dennis v. Thurman, 959 F.Supp. 1253 (C.D.Cal. 1997). An inmate proceeding pro se and in forma pauperis brought an action against prison officials alleging constitutional violations because he was deprived of water for 36 hours. He also challenged the force used to extract him from his cell and alleged inadequate and untimely medical care for injuries he sustained during the cell extraction. The district court held that prison officials did not use excessive force in removing the inmate from his cell. The officials had used a block gun, which shot rubber blocks at a high velocity. The court found that no official acted maliciously or sadistically for the purpose of causing the inmate pain, and the cell extraction was necessary to allow a search which was conducted in response to a plan to kill a correctional officer. The court found that even if the inmate was without water for 36 hours during a search of his cell block, there was no Eighth Amendment violation. In the past, the inmate had used water to flood the cell block, creating a dangerous condition for both prison officials and other inmates. (California State Prison--Los Angeles County)

U.S. Appeals Court
 SEGREGATION
 VENTILATION
 TEMPERATURE
 CLOTHING
 BEDDING

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
ASBESTOS

Doyle v. Coombe, 976 F.Supp. 183 (W.D.N.Y. 1997). An inmate filed a civil rights action alleging that prison officials violated his Eighth Amendment right to be free from cruel and unusual punishment by exposing him to dangerous levels of asbestos. The district court granted summary judgment in favor of the prison officials, finding that they were entitled to qualified immunity because the inmate's exposure to asbestos predated the controlling law that found exposure to asbestos could support an Eighth Amendment claim. The inmate alleged that he was forced to work in areas where asbestos abatement projects were in progress; he claimed he was ordered to enter into areas in which signs were visibly posted warning that asbestos and asbestos-containing materials were present and that exposure without protective gear was dangerous. (Elmira Correctional Facility, New York)

U.S. District Court
TEMPERATURE
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. District Court
LIGHTING
ASBESTOS
PRETRIAL DETAINEE
NOISE
OUT-OF-CELL-TIME
PLUMBING
SANITATION
SAFETY
REMEDIES
STAFFING
TOTALITY OF
CONDITIONS
CROWDING
CELL CAPACITY
DOUBLE-CELLING
FIRE SAFETY
FACILITIES
HYGIENE

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

The court found that some conditions of pretrial confinement may violate the Constitution in combination when they would not do so alone, but only when they have a mutually enforcing effect that produces deprivation of a single, identifiable human need such as food, warmth, or exercise.

Conditions violated the pretrial detainees' due process rights where the jail operated at about 124% of its capacity on average during a nine-month period, resulting in double-celling of inmates in 41-square-foot cells designed for single occupancy, and causing excessive time in cells and insufficient day room space when inmates were allowed to leave their cells.

The court found that officials were entitled to summary judgment precluding any finding of deliberate indifference on crowding and space allocation claims because of their efforts to move inmates from the jail to relieve overcrowding.

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

The detainees were exposed to excessive risks of harm from earthquakes in violation of their due process rights, where the jail lay a quarter mile from the San Andreas fault and faced a 50% chance of experiencing a high magnitude earthquake over the next 50 years, but it appeared structurally unable to withstand substantial seismic activity and had a malfunctioning bar locking system and inadequate staffing that further augmented risk by potentially leaving inmates trapped in their cells during and after an earthquake. The court

rejected the government's contention that more than 30 public buildings in the area had the same seismic rating as the jail. The court noted that the public's alleged tolerance of risk associated with entering a poorly-constructed library or museum for an hour did not equate to tolerance for spending 100 days continuously trapped in such a facility. The court found deliberate indifference to the risk of earthquakes despite the defendants' contention that it would cost more than \$33 million to upgrade the jail and efforts to gain voter approval for funding for a new facility had failed. The court noted that the city could have attempted other funding methods and did have some funds allocated for seismic repairs but diverted that money to other projects. The court found due process violations resulting from physical defects in the jail's water, plumbing and sewage system which created safety hazards. The jail's antiquated water supply system violated public health requirements and safe drinking water codes. Deteriorated sanitary fixtures such as unsealed floors, hot water pipes with deteriorated asbestos insulation, violated the detainees' rights as did sewage leaks from plumbing equipment. These conditions violated detainees' rights even though there was no evidence of any disease resulting from the deficiencies.

Despite some efforts to reduce noise in the jail, the detainees established a constitutional violation in noise levels which ranged between 73 and 96 decibels, exceeding acceptable levels, and caused increased risk of psychological harm and safety concerns due to officers' inability to hear calls for help. The extent to which noise continued to exceed maximum standards suggested that previous noise reduction efforts were merely cosmetic and that far more could be done.

The court found due process violations from poor lighting where correctional standards mandated lighting of at least 20 foot-candles in living areas, and some health standards required 30 foot-candles, but readings in the jail ranged from 0.28 to 5 foot-candles. The court concluded that development and implementation of a narrowly tailored remedial plan was an appropriate remedy, and that the plan was to address each condition that was found unconstitutional including fire safety, seismic safety, water, plumbing, sewage, noise, lighting and overcrowding. (San Francisco Jail No. 3, California)

U.S. District Court
VENTILATION
ISOLATION

Thomas v. Irvin, 981 F.Supp. 794 (W.D.N.Y. 1997). A prisoner brought a § 1983 action against prison officials alleging that their placement of him in drug watch isolation status for seven days violated the Eighth Amendment and his due process rights. The district court found that the state did not violate the inmate's due process rights, noting that the room in which he was confined was larger than an average cell at the prison and was equipped with all of the essential items necessary for proper rest and hygiene. The inmate was allowed to exercise and smoke cigarettes, and he received regular meals and daily medical attention. The officials had obtained credible information from a confidential informant that the inmate was in possession of narcotics after a visit. The prisoner had alleged that the isolation room had inadequate ventilation because two air vents in the room were covered as a security measure to prevent inmates from concealing contraband in the vents. (Wende Corr'l Facility, New York)

U.S. Appeals Court
SMOKE

Weaver v. Clarke, 120 F.3d 852 (8th Cir. 1997). An inmate brought a § 1983 action against employees of the department of correctional services alleging Eighth Amendment violations arising from his exposure to environmental tobacco smoke (ETS). The defendants imposed a smoking ban in all correctional facilities and then prevailed on summary judgment motions on claims for damages and injunctive relief. In announcing the ban, the Director of the Department stated that "pending inmate litigation, both locally and nationally on the issue of second hand smoke are concerns that must be addressed." The inmate sought fees and expenses which were granted by the district court. The employees appealed and the appeals court affirmed. The appeals court held that the inmate was the prevailing party, affirming the district court award of \$8,346 in attorney fees and \$2,952 expenses. The court also found that the employees were not deliberately indifferent to the inmate's serious medical needs, as required to establish a § 1983 claim. The court noted that the employees took action to house the inmate in a smoke-free cell and took reasonable steps to ensure that the inmate's cellmate observed the no-smoking rule. (Lincoln Correctional Center, Nebraska)

U.S. District Court
SAFETY
SANITATION

Women Prisoners of Corrections v. Dist. of Columbia, 968 F.Supp. 744 (D.D.C. 1997) In an ongoing class action suit brought on behalf of female inmates in the District of Columbia, the District appealed a corrective order and its subsequent modification. The appeals court vacated in part and remanded. On remand, the district court required the District to remedy environmental health problems at its correctional facility for women, including repairing or replacing roofs of dormitories, conducting a vermin eradication program, replacing torn mattresses and pillows, providing adequate prisoner-controlled lighting, and installing a drainage system to prevent hazardous accumulations of water. The court required the District to install and maintain a manual fire alarm system and fire detection system in the women's facility, and to ensure that all bed linens, blankets and curtains or draperies were fire-retardant. (District of Columbia)

1998

U.S. Appeals Court
SANITATION
LIGHTING

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

VENTILATION
SHOWERS
FOOD

conditions of confinement. The actions were consolidated and all defendants except the jailer were granted summary judgment by the district court. The appeals court affirmed, finding that the county was not liable on the grounds of failure to train or inadequate hiring. The court held that the inmates did not show that the training received by the jailer was deficient and that even if it was, the sexual assault of the inmates was not plainly the obvious consequence of a deficient training program. The court noted that the sheriff should not have been expected to conclude that the jailer was highly likely to inflict sexual assault on female inmates if he was hired as a correctional officer.

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

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

U.S. District Court
DOUBLE CELLING
VENTILATION

Bolton v. Goord, 992 F.Supp. 604 (S.D.N.Y. 1998). Inmates brought a § 1983 suit claiming that New York's practice of housing two inmates in a prison cell previously used to house one inmate violated the Eighth and Fourteenth Amendments. The district court held that double celling under the conditions set forth at trial did not constitute cruel and unusual punishment and that New York had not conferred on inmates a protected liberty interest in single-cell housing. The court held that the application of the Eighth Amendment is guided by contemporary standards of decency, but while the opinions of experts and the standards established by concerned organizations may be helpful on some questions, they do not establish constitutional minima. According to the court, public attitudes toward certain punishment, or what society is willing to tolerate in its prisons, is the more appropriate gauge of contemporary standards. The court noted that when double-celling was researched prior to its implementation, officials considered whether an inmate was violent or victim-prone before placing him in a double cell, evidence did not establish a cause and effect relationship between double-celling and an increase in violence, and guidelines for double-celling took into account medical conditions. According to the court, double-celling was in effect in most other state prison systems and in the federal system at the time it was implemented in New York. Inmates had the same access to extensive programs and services after double-celling was implemented, and there was no evidence of "overcrowding" in the sense that the facility had to compromise its services in order to handle the additional number of inmates. The court also noted that disputes between cellmates were handled quickly and never rose to more than minor incidents of physical violence, the small cell size was not shown to have resulted in the deprivation of any basic human need, and there was no indication that natural ventilation was so inadequate as to cause injury. According to the court, the Eighth Amendment does not guarantee inmates a certain type of ventilation or a certain rate of air exchange. (Woodburne Correctional Facility, New York)

U.S. Appeals Court
EXERCISE
CROWDING
CELL CAPACITY
SHOWERS
HYGIENE

Craig v. Eberly, 164 F.3d 490 (10th Cir. 1998). A pretrial detainee brought a § 1983 action against a sheriff in his individual capacity, and a county, alleging he was subjected to unconstitutional conditions of confinement while he was confined in the jail. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court reversed and remanded, finding that summary judgment for the sheriff was precluded by the nature, seriousness and duration of the alleged deprivations. The detainee alleged that he was placed in a cell that measured eleven by fifteen feet with five or six other men for 24-hours a day, that his bed linens were never cleaned nor exchanged, that he was permitted only two showers a week in an unsanitary shower stall, that the sink in his cell frequently clogged and prevented his basic hygiene, that his cell had poor ventilation, and that he was allowed out of his cell for recreation only two times during his confinement. The parties disagreed on the length of the detainee's confinement, which the court found to be between two-and-one-half months and six months. (Otero County Jail, Colorado)

U.S. Appeals Court
SEGREGATION
SANITATION
HYGIENE

Davis v. Scott, 157 F.3d 1003 (5th Cir. 1998). A prisoner brought a pro se, in forma pauperis complaint against prison guards and their supervisors alleging unconstitutional conditions of confinement. The district court dismissed the complaint and the appeals court affirmed. The appeals court held that the prisoner's confinement for three days in a crisis management cell which he alleged had blood on the walls and excrement on the floor did not constitute an extreme deprivation so as to violate the prisoner's rights under the Eighth Amendment. The court noted that the prisoner had cleaning supplies available to him. (Coffield Unit, Texas)

U.S. District Court
HYGIENE
BEDDING

Jackson v. DeTella, 998 F.Supp. 901 (N.D. Ill. 1998). An inmate filed a pro se § 1983 action against prison officials in their individual and official capacities claiming he was subjected to excessive physical force and that he was subjected to cruel and unusual punishment because of certain conditions of his confinement. The district court held that officials who sprayed the inmate with a chemical agent and beat him were not entitled to qualified immunity. The court found that an eight-day deprivation of personal hygiene items and bedding was not cruel and unusual punishment, where there was no evidence that the deprivation resulted in harm to the inmate. (Stateville Correctional Center, Illinois)

U.S. District Court
ASBESTOS
EMOTIONAL DIS-
TRESS

Johnson v. DuBois, 20 F.Supp.2d 138 (D.Mass. 1998). An inmate brought a pro se action to recover for exposure to asbestos. The district court ruled that while the inmate could recover for exposure to asbestos without actually suffering from asbestosis, cancer, or other physical injuries, the inmate failed to establish that he was exposed to asbestos. The inmate alleged, based on news articles, that almost all buildings erected before 1970 used asbestos as fireproofing material, which the court found to be insufficient evidence. The inmate contended that he was exposed to asbestos while working on several corrections department inmate work crews during his incarceration, and that he was not provided with protective clothing or devices. (M.C.I. Shirley, Massachusetts)

U.S. Appeals Court
ASBESTOS

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

U.S. District Court
SMOKE

McPherson v. Coombe, 29 F.Supp.2d 141 (W.D.N.Y. 1998). An inmate brought a § 1983 action alleging violations of his First, Eighth and Fourteenth Amendment rights arising from his exposure to environmental tobacco smoke (ETS). The district court denied the defendants' motion for summary judgment, finding that it was precluded by fact questions as to whether smoke conditions in the prison violated contemporary standards of decency, whether officials were aware of the potential risks to the inmate's future health, and whether the superintendent was personally involved in decisions leading to denial of the inmate's request to be housed in a smoke-free environment. The court found that prison smoking regulations, which permitted smoking in dormitory areas, did not violate the inmate's First Amendment rights to freedom of association because designated non-smoking areas gave the inmate opportunities to exercise his right to associate with other inmates. The inmate had alleged that the smoking policy restricted his movement within the dormitory in his attempt to evade contact with ETS. (Attica Correctional Facility and Orleans Correctional Facility, New York)

U.S. Appeals Court
SMOKE

Scott v. District of Columbia, 139 F.3d 940 (D.C. Cir. 1998). Nonsmoking prisoners brought a civil rights suit against the District of Columbia alleging violation of their Eighth Amendment rights by exposing them to second-hand tobacco smoke. The district court entered an injunction requiring the District of Columbia to provide the prisoners with a smoke-free environment. The District appealed and the appeals court reversed, finding that evidence was insufficient to establish that the prisoners were exposed to an unreasonably high level of smoke, where measurements indicated that the amounts of second-hand smoke were within acceptable levels and the prisoners failed to demonstrate a relationship between the smoke and their alleged ailments. The appeals court also held that evidence was insufficient to establish that prison officials were deliberately indifferent to the risk of harm that second-hand smoke posed to prisoners, where evidence indicated that the officials made a good faith attempt to enforce a nonsmoking policy and improved ventilation in certain areas. (Lorton Correctional Complex, Virginia, District of Columbia)

U.S. District Court
TOTALITY OF
CONDITIONS
DOUBLE CELLING
FOOD
SANITATION
CROWDING

Simpson v. Horn, 25 F.Supp.2d 563 (E.D.Pa. 1998). An inmate brought a § 1983 action against a corrections commissioner and officials, alleging that conditions of confinement at an overcrowded facility violated his Eighth Amendment rights, and that a classification system for double-cell assignment violated the equal protection clause. The district court found that the alleged deficiencies in the facility were not cruel and unusual punishment, but that fact issues precluded summary judgment on the equal protection claim. The court questioned the officials' intent to cause racial segregation via double-celling, and ruled they were not entitled to qualified immunity with respect to that claim. The court noted that prison officials 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. The court found that housing two inmates in a cell designed for one inmate does not, per se, violate the Eighth Amendment proscription against cruel and unusual punishment, but it may if it results in deprivations of essential food, medical care, sanitation or other conditions intolerable for human confinements. The inmate had alleged that as the result

of overcrowding, inmates were not provided with adequate furniture, cleaning supplies, laundry service, ventilation, bedding, clothing, seating, recreational equipment, or telephones. He also alleged that food was served cold 85% of the time and that the dining hall was not kept clean or free of vermin. (State Correctional Institution at Graterford, Pennsylvania)

U.S. District Court
ASBESTOS
PRETRIAL DE-
TAINÉES

Smith v. Montefiore Med. Center Health Services, 22 F.Supp.2d 275 (S.D.N.Y. 1998).

A pretrial detainee sued a city and city corrections officials to recover from alleged injuries he suffered as the result of his alleged exposure to asbestos. The district court held that a three-day delay in treating the detainee after his alleged exposure did not amount to deliberate indifference to his serious medical needs, noting that a mere delay in rendering medical treatment does not rise to the level of a constitutional violation. The court also found that prison officials' failure to warn the detainee of the dangers of exposure to asbestos in connection with asbestos abatement work in the prison did not support a claim of deliberate indifference. Warning signs were reportedly posted three days after the alleged incident, which the court found to be at most negligent conduct. (George Motchan Detention Center, New York)

1999

U.S. District Court
CONDITIONS

Abarca v. Chevron U.S.A. Inc., 75 F.Supp.2d 566 (E.D.Tex. 1999). Prison employees and prison inmates, more than 1,000 total, sued the owner and operator of a pipeline and contractors who sold, installed and maintained the pipeline's valves, alleging assault, negligence, gross negligence, strict products liability, and cruel and unusual punishment arising out of a pipeline leak near the prison. The plaintiffs were forcibly exposed to gas when they were unable to be evacuated and the inmates were confined to their cells. The district court found that there was no federal question for which federal jurisdiction existed, dismissing the case. (Texas Department of Corrections, Liberty County, Texas)

U.S. District Court
MEDICAL CARE
TEMPERATURE
CLOTHING

Anton v. Sheriff of DuPage County, Ill., 47 F.Supp.2d 993 (N.D.Ill. 1999). A pretrial detainee brought a § 1983 action against a county and county officials alleging that he was subjected to unconstitutional conditions of confinement at a county jail. The district court refused to dismiss the case, finding that his alleged exposure to low temperature in a detention cell while naked and with no alternative means of protecting himself from the cold supported a claim of inadequate shelter against the county. The detainee allegedly repeatedly complained to jail officers for hours and they responded with jeers and laughter, and he was not provided with medical care until he threatened litigation. When a nurse finally attended to the detainee, his body temperature was three degrees below normal. The detainee had just attempted suicide and had been placed in a rubberized cell without clothing and was observed every 15 minutes. The court also found that deputies' alleged thwarting of medical treatment given to the detainee supported a claim of violation of his right to medical attention. The officers allegedly removed a blanket that was given to the detainee by the nurse, which the court held supported a claim for deliberate indifference. The court denied qualified immunity for the officers, finding that it was clearly established at the time of this incident that pretrial detainees had a constitutional right to adequate heat and medical attention. (DuPage County Jail, Illinois)

U.S. District Court
SHOWERS
EXERCISE
HANDICAPPED
INMATES

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
SANITATION
MEDICAL CARE

Caldwell v. Hammonds, 53 F.Supp.2d 1 (D.D.C. 1999). A prisoner brought a § 1983 action for damages for injuries allegedly suffered. The district court held that the prisoner failed to state a claim with his allegations of limited access to legal materials because he did not allege a specific injury as a result. But the court held that the prisoner stated a claim for deliberate indifference because his prescribed treatment for skin cancer was delayed. The court also found a claim for deliberate indifference in the prisoner's allegations that he was exposed to secondary tobacco smoke and to smoke from fires set in his cell block. The court noted that although prison policy prohibited smoking in the prison, tobacco products were sold in the prison canteen and correctional officers permitted smoking in cell blocks. The court found that pervasive unsanitary

and unhealthy conditions in his cell block existed for a long time and were obvious to any observer. Because the Director of the Department of Corrections had notice of these conditions, the prisoner stated a § 1983 claim for violation of the Eighth Amendment. (Cell Block 3, Maximum Security Facility, District of Columbia Department of Corrections, Lorton, Virginia)

U.S. District Court
CELL CAPACITY
DOUBLE BUNKING
SANITATION
FLOOR-SLEEPING
TOILETS
SHOWERS
PRETRIAL DETAINEES
SMOKE

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

U.S. Appeals Court
SMOKE

Henderson v. Sheahan, 196 F.3d 839 (7th Cir. 1999) U.S. Cert. Den. at 120 S.Ct. 2691. A pretrial detainee who was held in a county jail for four-and-one-half years brought a § 1983 action against the sheriff and corrections officials claiming injuries allegedly sustained as the result of his exposure to second-hand smoke. The district court dismissed the action. The appeals court affirmed, finding that the inmate's alleged present injuries were not sufficiently serious to support a due process claim and that the detainee could not recover for future injuries absent a showing to a reasonable medical certainty that he faced an increased risk of developing a future injury attributable to the alleged exposure. The detainee alleged present injuries that included breathing problems, chest pains, dizziness, sinus problems, headaches, and loss of energy. Although the jail had a non-smoking policy the detainee claimed that inmates routinely violated it. (Cook County Jail, Illinois)

U.S. Appeals Court
BEDDING
CLOTHING
HEATING
HYGIENE
LABOR
ODORS
SANITATION
TEMPERATURE

Palmer v. Johnson, 193 F.3d 346 (5th Cir. 1999). A state inmate brought a § 1983 action for monetary and injunctive relief against correctional officials, alleging violation of his constitutional rights when he was forced to spend a night on a work field, along with other members of a work squad, without adequate bathroom facilities and shelter. The district court found a warden and assistant warden liable in their individual capacities, granted injunctive relief, and ordered claims for monetary damages to proceed to trial. The appeals court affirmed in part and remanded, finding that the inmate had demonstrated a violation of his clearly established Eighth Amendment rights and that the warden and assistant warden were not entitled to summary judgment on the basis of qualified immunity. The inmate alleged that he and other members of his work crew were confined outdoors overnight without any shelter, jackets, blankets, or a source of heat while the temperature dropped and the wind blew, and without bathroom facilities for 49 inmates sharing a small bounded area. The warden allegedly ordered this "sleep-out" in response to the inmates' response to a lecture they had received from a sergeant after lunch. They were ordered to stop and sit in the field, even though some of them wanted to go to work. They were confined to an area measuring approximately twenty feet by thirty feet, bounded by poles and a string of lights. Correctional officers were ordered to shoot any inmate who attempted to leave the designated area. When the inmate asked permission to leave the area to urinate and defecate he was informed that he would be shot if he attempted to do so outside of the boundaries that had been set. The inmates were dressed in short sleeve shirts for a day of work in the field, but the temperature fell below fifty-nine degrees overnight and the inmates were forced to stay warm by huddling together. Both the warden and assistant warden were present during the evening of the "sleep-out" and the warden allegedly threatened another such event if the inmates refused to work. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
FAILURE TO PROTECT

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. District Court
LIGHTING
ODORS
NOISE
SANITATION

Preval v. Reno, 57 F.Supp.2d 307 (E.D.Va. 1999). A detainee of the Immigration and Naturalization Service (INS) filed a pro se action under § 1983 alleging violation of his constitutional rights. The district court found that loud noise, constant light, bad odor and low room temperature could not be characterized as "punishment" unrelated to the detainee's detention. The district court also found that the detainee failed to state a due process claim based on INS staff failure to protect him from an assault by another inmate, where there was no allegation that any official or staff member was aware of the potential for the specific altercation before it took place. (Piedmont Regional Jail, Virginia, under contract to the Immigration and Naturalization Service)

U.S. District Court
LIGHTING
NATURAL LIGHT

Richard v. Reed, 49 F.Supp.2d 485 (E.D.Va. 1999). A prisoner brought a § 1983 complaint alleging that county jail officials violated his Eighth Amendment rights by depriving him of direct sunlight for more than 100 days. The district court dismissed the case, finding that the prisoner failed to state an Eighth Amendment claim because deprivation of sunlight for 100 days was not a sufficiently serious deprivation of a human need. The court held that the case was frivolous. The prisoner was confined in a housing unit comprised of a dayroom which had no windows and ten cells, each of which had a window. Prisoners were not allowed in their cells between 8:30 a.m. and 5:30 p.m. and prisoners who wanted to take recreation could use an indoor recreation area. The prisoner alleged that his health was placed in danger because he was exposed to illness caused by a lack of exposure to direct sunlight. The court suggested that there might be extreme circumstances under which deprivation of sunlight or light for an extended period of time might amount to a serious deprivation, but found this was not such a case. The court cited Charles Dicken's *A Tale of Two Cities* in which a character was imprisoned in the Bastille for almost eighteen years in a small cell "where the light of day has never shone." But after reviewing nine cases that had considered a similar question with varied results, the court concluded that "the threshold for constitutional significance occurs well short of the Dickens example." The court found that the conditions cited by the prisoner did not violate contemporary notions of decency, stating that "This conclusion finds support given that people who serve on nuclear submarines or who live within the Arctic Circle or in Antarctica go without direct exposure to sunlight for similarly long periods of time." The court also noted that the window in the prisoner's cell would provide natural light in the summertime when he was allowed back into the cell at 5:30 p.m. (Fairfax County Adult Detention Center, Virginia)

U.S. District Court
DEATH PENALTY
EQUAL PROTECTION

Riley v. Snyder, 72 F.Supp.2d 456 (D.Del. 1999). A death row inmate who was confined to the maximum security unit of a state prison challenged his conditions of confinement and moved for a temporary restraining order. The district court denied the motion, finding that death row inmates confined in the maximum security unit were not a suspect class for the purpose of his equal protection allegation. (Delaware Department of Correction)

U.S. District Court
CROWDING
FOOD
FLOOR-SLEEPING
EXERCISE
SHOWERS

Robeson v. Squadrito, 57 F.Supp.2d 642 (N.D.Ind. 1999). Inmates brought an action against a county and jail officials alleging violations of their Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the conditions of confinement in the overly-crowded jail did not rise to the level of deprivations of "the minimal civilized measures of life's necessities." The court found that the officials' failure to give an inmate his high blood pressure medication for 36 hours was not deliberate indifference to his serious medical needs given there was no evidence he was denied the medication out of anything approaching a total unconcern for his welfare, and the inmate did not suffer any injury or harm. The court also found that the failure of jail officials to give the inmate his hypoglycemic diet was not deliberate indifference where the inmate's blood sugar was tested daily in accordance with his physician's order, and no special diet was ordered because his sugar levels were normal. According to the court, the cumulative conditions of confinement in the crowded county jail did not rise to the level of deprivations required to find an Eighth Amendment violation, even though the inmate was required to sleep on a thin mattress on the floor, had one shower, was assaulted by another inmate, was not taken to a gymnasium, was given small servings of food, and was initially denied an "indigent pack" of hygiene items. The court noted that the inmate had a blanket, clean sheets, functional toilets, sinks, drinking fountain and television, he exercised in the cell, and he did not suffer any injury as a result of the assault. (Allen County Jail, Indiana)

U.S. District Court
TOTALITY OF CONDIT.
TOILETS
EXERCISE
FLOOR-SLEEPING
SANITATION
SEGREGATION

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 violation. However, the court found that the alleged deprivations and violations, when taken together, constituted a violation of his Eighth Amendment rights, precluding summary judgment for the jail officials. (Allen County Jail, Indiana)

U.S. District Court
SANITATION
HYGIENE
NOISE

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
HANDICAPPED
INMATES

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

U.S. Appeals Court
SMOKE
SMOKE-FREE ENVIRON.

Warren v. Keane, 196 F.3d 330 (2nd Cir. 1999). State inmates brought a § 1983 action alleging that they were subjected to cruel and unusual punishment through exposure to second-hand smoke. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed and remanded the case. The appeals court held that at the time the inmates brought the action it was clearly established that prison officials could violate the Eighth Amendment through deliberate indifference to inmates' exposure to levels of environmental tobacco smoke (ETS) that posed an unreasonable risk of future harm to the inmates' health. According to the court, fact issues existed as to whether the prison officials reasonably believed that they were not violating the inmates' Eighth Amendment rights in permitting their exposure to allegedly severe levels of ETS. (Cell Block A, Sing Sing Prison, New York)

2000

U.S. District Court
CLOTHING

Ashann-Ra v. Com. Of Virginia, 112 F.Supp.2d 559 (W.D.Va. 2000). A prisoner sued state officials alleging various constitutional violations. The court held that the prisoner's claim that correctional officers failed to provide him with well-fitted shoes for 24 days did not state an Eighth Amendment claim, where he did not allege that he suffered any serious physical injury to his feet or any other part of his body. The court found that the prisoner's claim that correctional officials misapplied grievance procedures by refusing to accept grievances about a grooming policy that had not yet been enforced, failed to state a deprivation of any constitutionally protected rights. According to the court, an institution's failure to comply with state grievance procedures does not compromise an inmate's right of access to courts because state grievance procedures are separate and distinct from state and federal legal procedures. (Red Onion State Prison, Virginia)

U.S. Appeals Court
SANITATION
USE OF FORCE
FOOD
TEMPERATURE

Johnson v. Lewis, 217 F.3d 726 (9th Cir. 2000). Inmates who had been held out-of-doors while prison officials searched buildings after quelling disturbances brought two class actions against prison officials under § 1983, asserting that the conditions under which they were held violated the Eighth Amendment. The district court granted summary judgment for the defendants in each case and the inmates appealed. The appeals court reversed and remanded, holding that the inmates' evidence, if believed, would establish deprivations sufficiently serious to satisfy the objective component of the Eighth Amendment. The court found that the evidence was sufficient,

if believed, to show that the officials had actual knowledge of the inmates' exposure to the elements and need for sanitation, edible food, and adequate drinking water, and that they intentionally disregarded these conditions. The inmates alleged that during the four days that they were held out-of-doors in the summer they did not receive protection from the elements sufficient to ward off heat-related illnesses, that they received inedible food and inadequate drinking water, and that they did not receive adequate access to toilets to avoid soiling themselves and were not allowed to clean themselves after. The inmates had also been held out-of-doors for 17 hours in subfreezing temperatures in the winter. (Arizona State Prison in Safford)

U.S. District Court
OUT OF CELL TIME
EXERCISE

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

U.S. District Court
CROWDING
FOOD
BEDDING
TOILETS
SANITATION

Oladipupo v. Austin, 104 F.Supp.2d 626 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court held that the failure of jail officials to segregate pretrial detainees who were HIV positive did not violate the due process rights of non-infected detainees. The court denied summary judgment for the officials on the issue of whether the jail's dormitory violated state fire and sanitation codes. The detainee alleged that the dormitory was overcrowded and had only eight sinks, commodes and showers for 72 pretrial detainees that were housed in the dormitory. According to the court, the detainee's allegation that he was denied a meal at the jail dining hall on one occasion because he was not wearing shoes, as required by jail policy, was insufficient to state a due process violation. The court denied summary judgment to the officials on the issue of whether denial of a mattress during the initial part of his detention, which the court characterized as a "basic human need," violated the due process rights of the detainee. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
SANITATION
FIRE SAFETY
SEPARATION

Oladipupo v. Austin, 104 F.Supp.2d 643 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court found that the fact that INS detainees held at the parish jail had fewer privileges than INS detainees held at a federal detention center did not violate the Equal Protection Clause. The court also found that housing INS detainees with convicted prisoners did not violate the Due Process Clause. The court denied summary judgment for the officials on the allegation that the housing unit at the jail had serious sewage problems that created unsanitary conditions. The court also denied summary judgment to the officials on the allegation that the jail had an inadequate number of emergency exits. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
BEDDING
FLOOR-SLEEPING
TEMPERATURE
VENTILATION

Oladipupo v. Austin, 104 F.Supp.2d 654 (W.D.La. 2000). A detainee of the Immigration and Naturalization Service (INS) who was awaiting removal from the United States brought a § 1983 action against parish jail officials challenging the constitutionality of his conditions of confinement. The district court held that the allegation that the detainee was deprived of a mattress and bed presented a cognizable constitutional claim. According to the court, the detainee's allegation that he was forced to sleep on a cold, wet floor for seven hours presented a due process claim. Jail officers had removed mattresses from a cell in which the detainee and others were housed after they had placed barriers in front of the ventilation system in an attempt to control the temperature in the cell. The court held that an issue of fact existed as to whether jail officials were personally involved in creating and perpetuating the conditions. (Avoyelles Parish Jail, Louisiana)

U.S. District Court
VENTILATION

Sarro v. Essex County Correctional Facility, 84 F.Supp.2d 175 (D.Mass. 2000). A state prison inmate sued prison officials under § 1983 for violation of the Massachusetts Tort Claims Act. The district court granted summary judgment for the defendants, finding that the requirement that the inmate keep his cell windows shut for three days and nights did not violate the Eighth Amendment. According to the court, the inmate's allegation that he was not "breathing normally" during the period that the windows were shut, and that he needed to use his inhaler to help him breathe normally, was an insufficient assertion of a physical injury to maintain a suit to recover for alleged mental and emotional injury. (Essex County Correctional Facility, Massachusetts)

2001

U.S. Appeals Court
SMOKE

Alvarado v. Litscher, 267 F.3d 648 (7th Cir. 2001). A prisoner brought an action against a prison alleging deliberate indifference to his exposure to environmental tobacco smoke in violation of the Eighth Amendment. The district court denied the prison's motion to dismiss and the appeals court affirmed, finding that the prisoner stated a claim upon which relief could be granted. The court

found that the prisoner's current and future health had been endangered because he had chronic asthma. The prisoner alleged that other prisoners in his non-smoking housing unit smoked in violation of prison policy because correctional officers were frequently not at their post to enforce the smoking ban. The prisoner also alleged that he is unable to participate in programs that would enhance his chances of parole because smoking is permitted in common areas of the prison. (Dodge Correctional Institution, Wisconsin)

U.S. District Court
EQUAL PROTECTION

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. District Court
TEMPERATURE
CLOTHING
LAUNDRY

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

U.S. District Court
TEMPERATURE
SMOKE
EXERCISE
SANITATION

Caldwell v. District of Columbia, 201 F.Supp.2d 27 (D.D.C. 2001). An inmate filed a § 1983 action against the District of Columbia and several employees of its corrections department, alleging unconstitutional conditions of confinement and denial of medical care. A jury entered a verdict in favor of the inmate, on all claims, and awarded \$174,178. The appeals court granted judgment for the defendants as a matter of law, in part, denied judgment for the defendants in part, and did not reduce the damage award. The court found that statements by the inmate's attorney during his closing argument, suggesting specific dollar amounts to be considered by the jury, did not warrant a new trial. The appeals court held that findings that conditions were unconstitutional were supported by evidence, as were findings that officials were deliberately indifferent to the inmate's serious medical needs. The appeals court held that the Prison Litigation Reform Act (PLRA) does not require a prisoner to allege or prove serious, permanent physical injury in order to bring an action for violation of his constitutional rights. The appeals court 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, Dist. of Columbia)

U.S. District Court
DOUBLE BUNKING
CLASSIFICATION
MEDICAL CARE
SEPARATION
WORK

Canell v. Multnomah County, 141 F.Supp.2d 1046 (D.Or. 2001). An inmate brought a § 1983 action alleging that his conditions of confinement in a county jail violated his constitutional rights. The district court granted summary judgment for the defendants. The district court held that the inmate did not suffer a constitutionally significant injury, sufficient to support a § 1983 action under the Prison Litigation Reform Act (PLRA), as the result of jail officials' failure to shower and "debug" inmates or test them for communicable diseases before double bunking them and mixing them with the general population. The inmate's alleged injuries consisted of toe fungus, occasional constipation, brief denials of food, sanitation, and water, nose sores, and cold winter temperatures. The court found that the inmate's exposure to a cellmate suffering from acquired immune deficiency syndrome (AIDS) did not violate his rights, even though he was splashed in the eye with vomit from the cellmate, where the inmate had not since been tested as HIV positive. According to the court, the inmate's fear that his cellmates might attack him did not support a § 1983 action even if he was actually attacked once, because the attack did not require him to seek medical attention. The court did not find a constitutional violation that would survive PLRA requirements arising from the inmate's allegations that he was required to wash chairs for 45 minutes, even though the task caused pain in his hands and elevated his blood pressure and stress. The court noted that the inmate must show that he was required to work beyond his strength, that he risked his life or health, or that he suffered undue pain. (Multnomah County Jails, Oregon)

U.S. District Court
BEDS
FLOOR-SLEEPING
MEDICAL CARE
TOILETS

Carlyle v. Aubrey, 189 F.Supp.2d 660 (W.D.Ky. 2001). A former prisoner brought a § 1983 action against a county jail alleging Eighth Amendment violations. The district court granted summary judgment in favor of the defendants. The court held that the prisoner's medical needs were not treated with deliberate indifference, noting that medication was administered twice during the prisoner's one-day stay at the jail, he was intoxicated when arrested, and he admitted that his

seizures caused memory loss. The court held that the prisoner was not subjected to unconstitutional conditions of confinement, even though water service in his cell was broken, he was forced to sleep on the floor, and he was fed only a bologna sandwich. The prisoner had admitted that he was offered drinking water on at least two occasions and that officers brought in water to flush the toilet. The court noted that although forcing a prisoner to sleep on the floor for extended periods may amount to an Eighth Amendment violation, the temporary inconvenience of one night spent on the floor does not. (Jefferson County Jail, Kentucky)

U.S. Appeals Court
PLUMBING
SANITATION

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

U.S. District Court
CELL CAPACITY
CROWDING

Chilcote v. Mitchell, 166 F.Supp.2d 1313 (D.Or. 2001). A former prisoner and detainees at a federal detention center sued officials alleging they were subjected to unconstitutional conditions of confinement. The district court granted summary judgment in favor of the officials, finding no Eighth and Fourteenth Amendment violations from the size of the cell. The court noted that all three occupants of the cell could not be off of their bunks at the same time because the cell was so small, and the occupants were confined in the cell for 20 to 21 hours daily. The court found that the crowding was necessitated by the volume of incoming detainees and the lockdown was needed because of the danger posed by detainees had not yet been evaluated. The cells had been designed to house two inmates and ranged in size from 80.7 to 96 square feet. In a triple-bunk cell, 40 to 45 square feet of floor space is covered by the bunks, sink and toilet. The remaining floor space, 35 to 40 square feet "effectively does not permit all three occupants to be off their bunks at the same time." There are no lockers, chairs or tables in the cells. (Fed. Detention Cent., Sheridan, Oregon)

U.S. District Court
TEMPERATURE

Covillion v. Alsop, 145 F.Supp.2d 75 (D.Me. 2001). An arrestee brought a § 1983 action alleging excessive use of force while he was confined. The district court found that the arrestee failed to show excessive use of force based on the allegedly freezing temperature of his holding cell. The arrestee had alleged that he had been placed in the cell "where they turned the freezer on." and implied that the jail administrator was responsible for cooling the cell. The court noted that the thermostat that controls the cell temperature also controls the temperature of the jail control room, booking room, and visitors' room. (Somerset County Jail, Maine)

U.S. District Court
ASBESTOS

Crawford v. Artuz, 143 F.Supp.2d 249 (S.D.N.Y. 2001). Prison inmates sued officials alleging that the officials did not make a sufficient response to problems caused by the presence of friable asbestos. The court entered judgment for the officials, finding that the inmates failed to show present or future prospects of injury from exposure to asbestos. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
TOILETS
SANITATION

Despain v. Uphoff, 264 F.3d 965 (10th Cir. 2001). A prison inmate brought a § 1983 action against prison officials alleging Eighth Amendment violations. The district court granted summary judgment in favor of the officials and the inmate appealed. The appeals court reversed and remanded. The appeals court held that flooding of the prison's administrative segregation unit was a significant deprivation, as required to support an Eighth Amendment claim, and that there was an issue of material fact as to whether there was an ongoing threat to safety during the flooding that would justify the inmate's exposure to human waste. Because the inmate's extended exposure to human waste as a result of flooding was a violation of clearly established law, the court found that an associate prison warden was not entitled to qualified immunity. The court also found that the inmate stated a claim of excessive use of force in his allegation that a corrections officer indiscriminately discharged pepper spray. (Wyoming State Penitentiary)

U.S. Appeals Court
SANITATION
TEMPERATURE
PLUMBING

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

U.S. District Court
SMOKE

Reilly v. Grayson, 157 F.Supp.2d 762 (E.D.Mich. 2001). A prisoner brought a § 1983 action against a warden, deputy warden, and Michigan Department of Corrections physicians, alleging violation of his Eighth Amendment rights. After a bench trial, the district court ruled that the warden and deputy wardens were deliberately indifferent to the prisoner's serious medical need to be placed in a smoke-free environment, supporting the prisoner's cruel and unusual punishment claims. The court found that the wardens were reckless in their disregard of the prisoner's rights, and awarded the prisoner \$18,250 in punitive damages and \$36,500 in compensatory damages for the five years of inaction by the wardens. The prisoner had two Individual Management Plans (IMP) which required that he be placed in a smoke-free environment, but the non-smoking regulations in the prisoner's cell block were consistently violated and the wardens were aware of the violations. After receiving notice that the IMPs were not being followed, the wardens continued to do nothing to remedy the situation. The court concluded that the three wardens "...each clearly ignored his supervisory obligations and, as a consequence, should suffer the opprobrium of punitive damages, not so much to deter each of them in the future, but to deter other officials in like positions of ignoring their responsibility." (Trustee Division, State Prison of Southern Michigan)

U.S. District Court
TEMPERATURE

Scotti v. Russell, 175 F.Supp.2d 1099 (N.D.Ill. 2001). An inmate brought a § 1983 action seeking injunctive relief and damages for alleged Eighth Amendment violations. The district court entered judgment for the defendants, finding that the temperature of the inmate's cell was not sufficiently cold as to constitute an Eighth Amendment violation of the inmate's right to adequate shelter. According to the court, temperature logs and maintenance records showed that the heating system was functioning adequately at the time, with the exception of two breakdowns that were quickly repaired. The inmate's medical records showed no indication of temperature-based health complaints. The court also noted that extra blankets were made available to inmates, and the prison supplemented the heating system with a program to insulate cells by taping plastic sheeting over the windows and by cleaning heating ducts. (Stateville Correctional Center, Illinois)

U.S. District Court
TEMPERATURE
HYGIENE
FOOD

Waring v. Meachum, 175 F.Supp.2d 230 (D.Conn. 2001). Inmates brought several class actions against prison administrators and correctional officers alleging constitutional violations during a lockdown. The actions were consolidated and the district court granted summary judgment in favor of the defendants. The court held that where a genuine emergency exists, officials may be more restrictive than they otherwise may be, and certain services may be suspended temporarily without violating the Eighth Amendment. The lockdown was precipitated by a series of prisoner assaults on staff and other prisoners. According to the court, the provision of cold food is not, by itself, an Eighth Amendment violation as long as it is nutritionally adequate and is prepared and served under conditions that do not present an immediate danger to the health and well-being of the inmates who consume it. The prisoners had been served primarily sandwiches for lunch and dinner, and cold cereal for breakfast, during an eight-day lockdown. The court noted that the diet was without fruits and vegetables, but that it was imposed for only a short period. According to the court, any failure to provide religious diets during the course of the eight-day lockdown did not violate the Eighth Amendment absent evidence of deliberate indifference. The court noted that one inmate's first meal was confiscated but future meals were delivered, often in an untimely manner, and that a second inmate missed two meals during the lockdown. The court held that a delay in delivering a medically-prescribed diet for six days during the lockdown did not violate the Eighth Amendment. The court found that refusal to allow prisoners to shower during the eight-day lockdown did not rise to the level of an Eighth Amendment violation, nor was failure to provide prisoners with changes of clothing during the lockdown. The court found no constitutional violation in the alleged failure to provide adequate heat the cellblocks during the eight-day lockdown during the winter. Temperatures in the cellblocks were at least 60 degrees, heat could not be controlled by individual officers, and officers promptly covered any windows that were broken by inmates. (Connecticut Correctional Institution at Somers)

U.S. District Court
BEDDING
TEMPERATURE
SANITATION

Wells v. Jefferson County Sheriff Dept., 159 F.Supp.2d 1002 (S.D.Ohio 2001). A former inmate filed a § 1983 action against a county sheriff's department, sheriff and two deputy officers employed at a county jail. The district court granted summary judgment for the defendants. The court found that jail officers were not liable for failing to protect the inmate from another prisoner who had previously attacked him. The officers moved the former inmate to a different cell block upon learning of the history between the inmates, and the former inmate did not allege that he experienced any physical injury as the result of being attacked a second time. The court held that the former inmate's allegations that the single blanket he was allowed in a holding cell was not adequate to keep him warm, and that cockroaches climbed on him while he slept, did not state Eighth Amendment claims where he did not complain to any officers or officials that the cell was uncomfortable or unsanitary. (Jefferson County Jail, Ohio)

U.S. Appeals Court
SMOKE

Davis v. New York, 316 F.3d 93 (2nd Cir. 2002). A pro se state prisoner brought a § 1983 action alleging he was exposed to unreasonably high levels of second-hand smoke, in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court held that summary judgment was precluded on the issue of whether the prisoner was exposed to unreasonable levels of second-hand smoke. The court held that the prisoner's claim was not moot, even though he had been transferred to a different housing block and the prison implemented a restrictive smoking policy, because the prisoner was housed in a block without individual cell windows and in conditions similar to those he experienced prior to the transfer. The prisoner also asserted that the prison's new smoking policy was not being enforced. (Attica Correctional Facility, New York)

U.S. District Court
FOOD
SANITATION

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

U.S. Appeals Court
TEMPERATURE

Flores v. O'Donnell, 36 Fed.Appx. 204 (7th Cir. 2002). An inmate brought a § 1983 action against corrections officials alleging cruel and unusual punishment. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals held that while an issue of fact existed as to whether the duration and severity of cold in the inmate's cell was serious enough to implicate the Eighth Amendment, officials were not deliberately indifferent to the inmate's complaints about the cold. The court noted that in order to assess whether cold cell temperatures violated the Eighth Amendment, the court must consider factors that include the severity of the cold, its duration, whether the prisoner had alternatives means to protect himself from the cold, and the adequacy of such alternatives. According to the court, officials responded to the inmate's complaints by offering him clothing, three hours after he first complained of the cold, on the condition that he wear a mask to prevent him from spitting on officers. The inmate refused, and later received medical attention several times. (Waupun Corr'l Facility, Wisconsin)

U.S. District Court
CROWDING
MEDICAL CARE
PRETRIAL DETAINEE

Foster v. Fulton County, Georgia, 223 F.Supp.2d 1292 (N.D.Ga. 2002). Inmates at a county jail, who had tested positive for human immunodeficiency virus (HIV), brought an action complaining of their conditions of confinement and inadequate medical care. The parties entered into a settlement agreement. Two years later the district court responded to a report that described ten areas in which the county had failed to comply with the terms of the settlement. The court held that continued overcrowding at the jail deprived the HIV-positive inmates of their constitutional right to minimal civilized measures of life's necessities. The court ordered the county to institute additional measures to reduce crowding, including: providing counsel within 72 hours of arrest to all persons accused of minor offenses who could not make bail; expanding the authority of Pretrial Services to include supervision of persons arrested for misdemeanor offenses; eliminating any unreasonable factors used to exclude persons charged with felonies from pretrial release; ensuring persons charged with misdemeanors were offered a reasonable bond; and imposing additional restrictions on the length of time a person could remain in jail without accusation or indictment, or accused or indicted but untried. The court found the county had violated the settlement agreement by failing to refer HIV-positive inmates to outside specialists in a timely manner when the jail's own staff lacked the resources to provide timely care. The court noted that even though the county had eliminated its financial review procedures, other bureaucratic problems remained and resulted in delays of three weeks to six months. The court held that the county failed to employ sufficient numbers of trained correctional staff to meet the health needs of HIV-positive inmates. The court ordered the county to immediately develop and implement a plan to increase security staffing at the jail to the level necessary to provide timely access to medical care for the current population of inmates. The court also ordered the county to avoid unreasonable disruption in the continuity of new inmates' medication, noting that only half of the inmates with a credible history of HIV medications were receiving their first doses of medication within 24 hours after admission. (Fulton County Jail, Georgia)

U.S. Appeals Court
SANITATION
TOILETS

Frye v. Pettis County Sheriff Dept., 41 Fed.Appx. 906 (8th Cir. 2002). A pretrial detainee brought a § 1983 action against county officials, alleging unsafe and hazardous living conditions at a county jail. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the detainee failed to show that jail officials were deliberately indifferent to his health and safety because the toilet in his cell leaked both sewage

and water. Jail staff frequently provided blankets or towels to absorb the water and a plumber had attempted to fix the toilet after the detainee slipped and fell. (Pettis County Jail, Missouri)

U.S. District Court
BEDS
FLOOR-SLEEPING
BEDDING
TOILETS
SANITATION
OUT OF CELL TIME
CROWDING

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

U.S. District Court
TEMPERATURE

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 the inmate was subjected to unconstitutionally cold conditions. The inmate alleged he was forced to live in a cold, drafty cell for three weeks during the winter, without his bed sheets and with only one blanket. (Southport Correctional Facility, New York)

U.S. District Court
CIVIL COMMITMENT

Munoz v. Kolender, 208 F.Supp.2d 1125 (S.D.Cal. 2002). A civil detainee who was confined in a county jail under the provisions of California's Sexually Violent Predator Act brought a § 1983 action against a county sheriff, challenging his confinement and the conditions of his confinement. The district court granted summary judgment in favor of the sheriff. The court held that the Act had a dual purpose, to remove dangerous sexually violent predators from society and to provide them with treatment, and that confinement pursuant to the Act was civil in nature, rather than criminal and punitive. The court found that the prisoner's allegations that he was handcuffed while speaking with his lawyer, subjected to strip searches, provided with poor food and with clothes in poor condition, were insufficient to support a § 1983 Eighth Amendment violation. (San Diego County Jail, California)

U.S. Appeals Court
EMOTIONAL
DISTRESS

Napier v. Preslicka, 314 F.3d 528 (11th Cir. 2002). A prisoner brought a pro se action against police officers for emotional injury allegedly resulting from mistaken arrest on a charge unrelated to his current incarceration. The district court dismissed the case as frivolous and the appeals court affirmed. The appeals court held that the alleged emotional harm occurred while the prisoner was in custody, for the purpose of the Prison Litigation Reform Act (PLRA) section that prohibited a prisoner from bring an action for mental or emotional injury absent a prior showing of physical injury. (Jacksonville, Florida)

U.S. Appeals Court
CELL CAPACITY
FLOOR-SLEEPING

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. Detention Ctr., Nevada)

U.S. District Court
NOISE
SANITATION

Oliver v. Powell, 250 F.Supp.2d 593 (E.D.Va. 2002). A prisoner brought a civil rights action alleging various constitutional violations. The prisoner and the defendants moved for summary judgment. The district court granted summary judgment in favor of the defendants on all of the prisoner's claims. The court held that the prisoner's allegations that prison officers deprived him of sleep by keeping him up with their singing, talking and other noise, and that his segregation cell had roaches, a leaky toilet, peeling paint and writing on the wall, did not rise to the level of an Eighth Amendment claim. The court found that these claims did not lie outside of the scope of the ordinary discomfort accompanying prison life, and noted that the prisoner neglected to report plumbing problems or use roach traps. (Southampton Correctional Center, Virginia)

U.S. Appeals Court
DEATH PENALTY

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 Department of Correction)

U.S. Appeals Court
SMOKE

Reilly v. Grayson, 310 F.3d 519 (6th Cir. 2002). A prisoner brought a § 1983 action against prison officials alleging violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment for the prisoner and awarded damages. The defendants appealed and the appeals court affirmed. The appeals court held that the prisoner had a right not to be exposed to environmental tobacco smoke that presented a serious risk to his health, and to removed from places where smoke hovered. The court affirmed the lower court findings that the prisoner's asthma was a serious medical condition and that it was exacerbated by exposure to second-hand smoke, and that the defendants repeatedly failed to respond to repeated recommendations by medical personnel that the prisoner be moved to a smoke-free setting. The appeals court affirmed the award of actual damages rather than nominal damages in the amount of \$36,500, and the award of punitive damages in the amount of \$18,250. The court found no abuse of discretion in the district court's award of \$51,786 in attorney's fees. (Michigan Department of Corrections)

U.S. Appeals Court
DOUBLE BUNKING
SMOKE

Sanders v. Kingston, 53 Fed.Appx. 781 (7th Cir. 2002). [unpublished] A state prison inmate brought a § 1983 action alleging that he suffered cruel and unusual punishment due to overcrowding and exposure to second-hand smoke. The district court dismissed the case for failure to state a claim, and the inmate appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the inmate's allegations that doubling him in a single cell without giving him a bunk for his mattress, a privacy curtain for bathroom use and a television stand, fell far short of the "extreme deprivation" required to state an Eighth Amendment conditions of confinement claim. The court held that the prisoner stated a § 1983 claim with his allegation that he was exposed to environmental tobacco smoke (ETS) for approximately six weeks and that prison officials exhibited deliberate indifference toward the risk that this exposure constituted a threat to his future health. (Columbia Corr'l Inst., Wisconsin)

U.S. District Court
DOUBLE-CELLING
CLASSIFICATION

Smith v. Muccino, 223 F.Supp.2d 396 (D.Conn. 2002). A state prisoner brought a pro se action alleging that the practice of housing him with violent inmates, sometimes in retaliation for his complaints, violated his constitutional rights. After an agreement to settle the case fell through, the court reopened the case and held that the prisoner's allegations stated a claim for an Eighth Amendment violation. The court noted that the prisoner was not claiming that double-celling was per se unlawful. The prisoner, who is Caucasian and who believes he is perceived to be gay, alleged that he was repeatedly housed with racist and homophobic inmates, and that his requests for a cell change were ignored. (Osborn Correctional Institution, Connecticut)

U.S. District Court
TEMPERATURE

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
CIVIL COMMITMENT

Trovillo 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
SAFETY
SHOWERS

Turner v. Miller, 301 F.3d 599 (7th Cir. 2002). An inmate brought a § 1983 action against prison officials to recover for injuries he allegedly sustained when he was shocked by exposed electrical wires in showers at a correctional center. The district court granted judgment for the officials and the appeals court affirmed, with modifications. The appeals court held that the prisoner failed to show that the officials were deliberately indifferent to his conditions of confinement, where the prisoner never filed a written grievance regarding the exposed wires, and the officials denied that they had ever seen the wires or that they were ever told about the wires. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
SEGREGATION

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

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
SEGREGATION
DOUBLE-CELLING

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 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
SMOKE

Atkinson v. Taylor, 316 F.3d 257 (3rd Cir. 2003). An inmate brought a suit under § 1983 claiming that prison officials violated his Eighth Amendment rights by exposing him to environmental tobacco smoke (ETS) that created a serious medical need and posed an unreasonable risk of harm. The district court denied summary judgment for the defendants and they appealed. The appeals court held that the defendant officials were not entitled to qualified immunity on the ETS claim because the right of a prisoner not to be subject to the risk posed by ETS was clearly established, and there was evidence that the inmate was housed for over seven months with "constant" smokers and that officials knew that tobacco smoke was dangerous. The inmate alleged that he suffered numerous symptoms as a result of his exposure to ETS and that no change was made in his housing conditions after he told prison officials about his sensitivity to ETS. (Delaware Multi-

Purpose Criminal Justice Facility)

U.S. Appeals Court
JUVENILES
MEDICAL CARE

Austin v. Johnson, 328 F.3d 204 (5th Cir. 2003). The parents of a convicted youth offender who was sentenced to attend a one-day "boot camp," brought a § 1983 action to recover damages after the minor suffered severe symptoms from a heat stroke. The district court rejected the camp directors' immunity defenses and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that requiring the minor to perform military-style exercises was neither cruel nor unusual punishment. The court held that the parents' allegation that officials waited nearly two hours before calling an ambulance for the unconscious minor was sufficient to state a claim for deliberate indifference to serious medical needs, and that the defendants were not entitled to official immunity for gross negligence claims. The court found that the Eighth Amendment applied to the convicted minor, even though he had been free to select the date and location of his punishment and his parents could have stayed to observe the camp if they had wanted. The court noted that the minor was not free to leave the camp and was subject to jail time if he failed to comply with camp requirements. (STAR Boot Camp, Harrison County, Texas)

U.S. District Court
SEGREGATION
EXERCISE
OUT OF CELL TIME

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. District Court
SMOKE

Gill v. Smith, 283 F.Supp.2d 763 (N.D.N.Y. 2003). An inmate brought a § 1983 action against a correctional officer, alleging violation of his Eighth Amendment rights by exposure to environmental tobacco smoke (ETS.) The district court held that it was clearly established that prison officials could violate the Eighth Amendment through deliberate indifference to an inmate's exposure to levels of ETS, and that genuine fact issues precluded summary judgment in favor of the officer. The inmate suffered from chronic asthma and breathing conditions, and alleged that the officer smoked while on duty in the law library, the general library, while at his assigned post, while traversing in and about the prison's media center, and while at the law library desk. The inmate allegedly repeatedly asked the officer not to smoke near him. (Auburn Correctional Facility, New York)

U.S. District Court
STAFFING
SANITATION
FACILITIES

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

U.S. Appeals Court
CELLS
DOUBLE CELLING

Hurst v. Snyder, 63 Fed.Appx. 240 (7th Cir. 2003) [unpublished]. A state prison inmate brought an action against prison officials, alleging that he was deprived of adequate living space. The district court dismissed the case as frivolous and the inmate appealed. The appeals court affirmed. The appeals court held that a former state statute that required prison facilities to provide at least 50 square feet of cell space per person did not give the inmate a protected liberty interest in having 50 square feet of cell space. The court found that the amendment of the statute, to delete the express reference to a "per person" space requirement, did not violate the ex post facto clause. (Menard Correctional Center, Illinois)

U.S. District Court
SEGREGATION
SANITATION
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. District Court
SEGREGATION
FOOD
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
CLASSIFICATION
ISOLATION
LEGAL ASSISTANCE
EXERCISE

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
CROWDING
SANITATION
MEDICAL CARE
VENTILATION

Brown v. Mitchell, 327 F.Supp.2d 615 (E.D.Va. 2004). The administratrix of the estate of a jail inmate who contracted and died from bacterial meningitis while in jail brought a civil rights action. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether the city had a policy or custom of jail mismanagement, and whether any policy or custom caused the inmate's death. The court also found that there were fact issues as to whether the sheriff violated the Eighth Amendment regarding jail overcrowding. The court ordered further proceedings to determine if the city council was aware of the long history of overcrowding, poor ventilation and structural defects in the jail. The court found that the sheriff did not violate the Eighth Amendment by failing to maintain sanitation in the jail, because sanitation deficiencies were caused by overcrowding, not by her failure to perform. The sheriff was also not found liable for failure to train her staff, where she had an illness-recognition and response program in place which consisted of initial and follow-up training, combined with surprise inspections. The court noted that the guards' failure to respond to the obvious illness of the inmate could be attributed to their failure to apply their training, for which the sheriff was not responsible. The court held that summary judgment was precluded by material issues of fact as to whether the jail physician showed deliberate indifference when he ordered the inmate returned to overcrowded and ill-ventilated quarters, essentially without treatment. (Richmond City Jail, Virginia)

U.S. Appeals Court
TEMPERATURE

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 found that the heat was not constitutionally excessive because the building mass generally remained between 80 degrees at night, and 85 to 86 degrees during the day. During the relevant period, the unit experienced temperatures over 90 degrees only nine percent of the time, recorded temperatures over 95 degrees only seven times, and never recorded temperatures over 100 degrees. The court noted that the building, although not air conditioned, had an effective ventilation system, and numerous conditions such as access to cold water, alleviated rather than exacerbated the heat. (Union Correctional Institution, Florida)

U.S. District Court
LAUNDRY

Davidson v. Conway, 318 F.Supp.2d 60 (W.D.N.Y. 2004). A prisoner moved to amend his § 1983 complaint to add additional defendants and to add two causes of action pertaining to his conditions of confinement. The district court denied the inmate's motion. The court held that even assuming that the inmate was issued one blanket, one towel, and one set of laundered bedding per week, the alleged deprivation was not sufficiently serious to constitute cruel and unusual punishment. The court noted that the Eighth Amendment does not mandate comfortable prisons. (Elmira Correctional Facility, New York)

U.S. Appeals Court
LIGHTING
HYGIENE
TEMPERATURE
LAUNDRY

Gates v. Cook, 376 F.3d 323 (5th Cir. 2004). A death row prisoner brought a suit on behalf of himself and other prisoners confined to death row, alleging that certain conditions of confinement on death row violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court found that a number of conditions violated the Eighth Amendment and issued an injunction designed to alleviate the conditions. The defendants appealed. The appeals court affirmed in part and vacated in part. The court held that the prison's accreditation by a national correctional association (American Correctional Association) was not proof that the conditions of confinement did not violate the Eighth Amendment. The court noted that compliance with association standards could be a relevant consideration, but was not evidence of constitutionality. The court held that evidence supported findings that the probability of heat-related illness was extreme at the death row unit in which the class members were housed, and that corrections officials had displayed deliberate indifference. The court found that lighting in each death row cell was less than twenty foot-candles, in violation of the constitutional rights of the class members. Expert testimony was presented that lighting in the cells was grossly inadequate for the purposes of sanitation, personal hygiene and reading, and that these conditions contributed to further mental health deterioration. The court did not find a constitutional violation in the condition of the inmate laundry, which required inmates to wash their own clothes with bar soap. The court found that parts of the district court injunction that applied to sections of the death row unit that did not house class members exceeded the scope of the litigation and were invalid. The injunction directed the prison to provide fans, ice water, and daily showers when the heat index was 90 degrees or above, or to make such arrangements from May through September. The court found an Eighth Amendment violation due to mosquito infestation coupled with insufficient screen gauge, which exacerbated the heat problems by deterring death row inmates from opening their windows to increase circulation. The court noted that pest infestation problems were linked to chronic sleep deprivation, which exacerbated the symptoms of mental illness. The court found a violation due to "ping-pong" toilets, and that corrections officials were deliberately indifferent to the risk of harm that these toilets presented to death row inmates. Experts established that a serious health hazard resulted when the feces of one inmate bubbled up in the neighboring cell, and that this was exacerbated when toilets overflowed. According to the court, the State Department of Health warned corrections officials every year for the past eleven years that the malfunctioning toilets were a critical public health problem that required immediate attention. According to the court, inmates were afforded insufficient mental health care, in violation of the Eighth Amendment. The court cited the isolation and idleness, squalor, poor hygiene, temperature, and the noise of extremely psychotic prisoners, which created an environment that was "toxic" to the prisoners' mental health. (Mississippi Department of Corrections, Unit 32-C, State Penitentiary in Parchman)

U.S. Appeals Court
TEMPERATURE

Jones-El v. Berge, 374 F.3d 541 (7th Cir. 2004). Prisoners of a "supermax" prison brought a suit challenging their conditions of confinement. After the plaintiff class was certified and a preliminary injunction was entered, a consent decree was approved by the court. The prisoners subsequently moved to enforce the decree. The district court entered an order directing the installation of air conditioning and the defendants appealed. The appeals court affirmed, finding that the district court's order was not a grant of "prospective relief" that was subject to the requirements of the Prison Litigation Reform Act (PLRA). (Wisconsin Secure Program Facility)

U.S. Appeals Court
CELLS
SEGREGATION

Magluta v. Samples, 375 F.3d 1269 (11th Cir. 2004). A former pretrial detainee brought an action against federal officials asserting constitutional claims relating to the conditions of his confinement. The district court dismissed several defendants for lack of jurisdiction and dismissed the case against the remaining defendants for failure to state a claim. The detainee appealed. The appeals court vacated and remanded. On remand, the district court dismissed the detainee's first amended complaint and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the detainee stated a claim that he suffered unconstitutional conditions of confinement and that the defendants were not entitled to qualified immunity. The detainee alleged that he was confined under extremely harsh conditions, that he was placed in solitary confinement and locked in an extremely small closet-sized space, with minimal contact with other human beings for a prolonged time that exceeded 500 days. The detainee alleged that the harsh conditions were imposed solely for the sake of punishment. The court noted that ample federal caselaw existed at the time of the challenged conduct to give fair warning to officials that it was unconstitutional to hold a detainee in solitary confinement 500 days, for punishment, with virtually no procedural protection in the form of periodic reviews. (United States Penitentiary, Atlanta, Georgia)

U.S. District Court
TOILETS

Masonoff v. Dubois, 336 F.Supp.2d 54 (D.Mass. 2004). State inmates filed a class action under § 1983 alleging that conditions of their confinement violated their Eighth Amendment rights. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that the facility's superintendent and administrator were not entitled to qualified immunity because a prisoner's right to adequate and hygienic means to dispose of his bodily wastes was clearly established in 1991. The court noted that a state court had required prison officials to inspect toilets at least twice per month and issued specific directions regarding their

inspection, cleaning and replacement. The officials allegedly did nothing to alleviate obvious sanitation problems associated with the cleaning and maintenance of the toilets. (Southeast Correctional Center, Massachusetts)

U.S. Appeals Court
HANDICAPPED
INMATES
CELLS

Miller v. King, 384 F.3d 1248 (11th Cir. 2004). A paraplegic state prisoner brought a § 1983 action alleging Eighth Amendment and Americans with Disabilities Act (ADA) violations. The district court granted summary judgment for the defendants on most of the claims, and following a jury trial entered judgment for a disciplinary hearing officer on the remaining claims. The prisoner appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that fact issues, as to whether the prisoner was afforded basic levels of humane care and hygiene, precluded summary judgment on the prisoner's § 1983 claims for monetary damages and injunctive relief under the Eighth Amendment. According to the court, the prisoner was "disabled" within the meaning of ADA and had standing to seek injunctive relief against a prison warden. The prisoner was due to remain in isolation for over eight years as the result of more than 180 disciplinary reports. Able-bodied inmates in disciplinary isolation are housed in less stringent units than the building in which the prisoner was housed. Because of the small cell size in his unit, prison policy calls for beds to be removed daily so that wheelchair-bound inmates have some minimal area within which to move around in their cells. The prisoner alleged that there was no room in his cell, making him immobile and restrained for long periods of time, and that prison staff failed to remove the bed from his cell daily. The prisoner also alleged that the showers in the housing unit are not wheelchair-accessible. (Georgia State Prison)

U.S. District Court
ASBESTOS

Pack v. Artuz, 348 F.Supp.2d 63 (S.D.N.Y. 2004). A state prisoner brought a pro se § 1983 action alleging failure to protect him from exposure to potentially dangerous levels of asbestos. The district court held that there was no evidence that the prisoner's Eighth Amendment rights were violated, absent evidence that the level of exposure posed an unreasonable risk of serious damage to his immediate or future health. According to the court, there was no evidence of either the intensity or duration of the alleged exposure in most of the cell block, and even in areas where exposure was assumed, there was no evidence as to the concentration of airborne asbestos fibers or that the inmate had an asbestos-related disease. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
ADA- Americans with
Disabilities Act

Phiffer v. Columbia River Correctional Inst., 384 F.3d 791 (9th Cir. 2004). A state inmate filed an action alleging that the state's failure to accommodate his osteoarthritis and osteoporosis violated the Americans with Disabilities Act (ADA) and the Rehabilitation Act. After the United States Supreme Court vacated the appeals court decision, the case was remanded. On remand, the Appeals Court affirmed and remanded, finding that the state waived its Eleventh Amendment immunity under the Rehabilitation Act by accepting federal funds. (Columbia River Correctional Institution, Oregon)

U.S. Appeals Court
SHOWERS
SAFETY

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

U.S. District Court
JUVENILES

Smith v. Barber, 316 F.Supp.2d 992 (D.Kan. 2004). Five high school students who were arrested for plotting an armed attack on a school sued city and county officials under § 1983, alleging violations of the Fourth Amendment relating to searches and their arrest, malicious prosecution, and violations of the Eighth Amendment. The district court granted summary judgment in favor of the defendants. The court held conditions of pretrial detention in a county jail did not violate the Eighth Amendment where state law required the juveniles to be held separate from adults, the students were only held from 11 to 21 days, and they were allowed outside. The court found that the requirement that they clean their own cells did not implicate the Eighth Amendment. The court also held that a detention hearing broke the chain of causation required to support a claim for malicious prosecution. (Labette County Jail, Kansas)

U.S. District Court
USE OF FORCE

Thomas v. Ferguson, 361 F.Supp.2d 435 (D.N.J. 2004). A state prison inmate sued prison officials, alleging that officers inflicted cruel and unusual punishment on him in violation of the Eighth Amendment during an altercation. The district court held that the degree of force applied and the seriousness of the injuries were insufficient to support an Eighth Amendment claim. The extent of the officers' contact consisted of three punches and two shoves, and the inmate's injuries consisted of a broken facial pimple, swollen areas on the cheekbone, and a small laceration on the bridge of his nose. (Special Treatment Unit, Kearny, New Jersey)

U.S. District Court
SMOKE

Bartlett v. Pearson, 406 F.Supp.2d 626 (E.D.Va. 2005). A state prison inmate who was a non-smoker suffering from asthma, brought a § 1983 Eighth Amendment action against corrections officials alleging that being housed in a cell and housing unit with inmates who smoked endangered his health. The district court granted summary judgment in favor of the defendants. The court held the officials were not deliberately indifferent to the inmate's request for non-smoking housing and they were not indifferent to the inmate's asthma. The court noted that an allegation that exposure to environmental tobacco smoke (ETS) posed an unreasonable risk of serious damage to future health is cognizable under the Eighth Amendment. The prison had a policy aimed at limiting, when practicable, inmates' exposure to ETS, and they twice offered the inmate the option of residing in special or segregated housing. The inmate was moved to a non-smoking area after being housed with smokers for a total of 17 weeks, which the court found to be "not unreasonable" given the level of crowding at the prison and the fact that safety concerns took precedence over smoking preferences. (Sussex II State Prison, Virginia)

U.S. Appeals Court
VENTILATION
HYGIENE

Board v. Farnham, 394 F.3d 469 (7th Cir. 2005). Arrestees who were detained in a county jail following their arrest on murder charges brought a civil rights action against a county sheriff and jail staff following their acquittal and release from jail. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed. The appeals court held that the sheriff was not entitled to qualified immunity on the claim that he violated a detainee's right to receive adequate attention for a serious medical condition, when he allegedly deprived one detainee of toothpaste for over three weeks and another detainee for over 113 days. One detainee suffered dental pain throughout his incarceration and had to have several teeth extracted because of tooth decay. The court denied qualified immunity for jail staff who allegedly deprived a detainee of his asthma inhaler on multiple occasions. The court also denied qualified immunity on the claim that they failed to provide humane health conditions as the result of the allegedly unhealthy condition of the jail's ventilation system. The detainees alleged that the flow of black fiberglass from the ventilation system caused nosebleeds and respiratory problems, and allegedly exacerbated the serious asthma condition of one detainee. (Edgar County Jail, Illinois)

U.S. District Court
FLOOR-SLEEPING
OVERCROWDING
PRETRIAL
DETAINEES

Brookins v. Williams, 402 F.Supp.2d 508 (D.Del. 2005). A former pretrial detainee brought a § 1983 action against a prison warden, alleging violation of his Eighth Amendment rights. The district court granted summary judgment in favor of the warden. The court held that forcing the detainee to sleep on the floor, without a mattress, next to a toilet was not punishment and therefore did not violate his due process rights, where the conditions served a legitimate governmental purpose of housing inmates in an overcrowded facility and only lasted for a period of five days. The court found that the warden was not deliberately indifferent to the serious medical needs of the detainee, where the inmate was given all of his medication within a day of being booked, except for medication which the inmate was unable to name for prison medical staff. The detainee was given tests to determine what he would need to treat his detected conditions. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
SANITATION

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

U.S. District Court
FLOOR-SLEEPING
USE OF FORCE

Calhoun v. Thomas, 360 F.Supp.2d 1264 (M.D.Ala. 2005). A detainee brought a § 1983 action against a sheriff and deputy sheriff in their individual capacities, raising excessive force, deliberate indifference and conditions of confinement claims. The defendants moved for summary judgment, which the district court granted in part and denied in part. The court held the detainee's allegation that he was deprived of shower shoes, clean clothes and a toothbrush upon his arrival at the jail did not rise to the level of a constitutional level. The court also found no violation in the allegation that he was made to sleep on the floor as the third person in a two-person cell. The court found a potential violation in the alleged conduct of officers during his interrogation. The officers allegedly choked and beat the detainee, who was restrained and posed no threat to anyone's safety, punched him in his gunshot wound, and slammed him into a door several times telling him they wanted to make him suffer as the victim in a robbery and shooting had suffered. The court held that the officers were not entitled to qualified immunity on the excessive force claim. (Pike County Jail, Alabama)

U.S. Appeals Court
HANDICAPPED
INMATES
ADA- Americans with
Disabilities Act

Cochran v. Pinchak, 401 F.3d 184 (3rd Cir. 2005). A blind inmate filed an action alleging that state prison officials violated his rights under Title II of the Americans with Disabilities Act (ADA) by temporarily denying him access to talking books, a talking watch, a useable lock, and his walking cane. The district court entered summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed. The appeals court held that ADA did not validly abrogate a state's immunity from claims for monetary damages brought by inmates under Title II of ADA. According to the court, Title II conflicted with the policy of giving prison officials wide latitude to create prison policies and anticipate security problems, and the state had a rational basis for regulating the inmate's access to a walking cane, talking book, and tape player. (East Jersey State Prison, New Jersey)

U.S. Appeals Court
SANITATION
TEMPERATURE
TOILETS

Hearns v. Terhune, 413 F.3d 1036 (9th Cir. 2005). A state prison inmate brought a § 1983 action alleging violation of his Eighth Amendment rights related to an attack in prison, and inhumane conditions in a disciplinary segregation unit. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegations stated a claim that prison officials failed to protect him from attacks by other inmates. The inmate had been beaten and stabbed in a prison chapel by inmates who belonged to another Muslim group. The inmate alleged that the officials knew that numerous Muslim inmates had been subject to attack by a ruling Muslim group in the prison chapel; the chaplain knew that the ruling Muslim group was trying to steal prayer oil from other Muslim inmates; the chaplain informed the ruling group that he had secretly delivered the oil to another inmate; and the chaplain told the ruling group that the inmate did not follow the teachings of Muhammad. The inmate alleged that an officer was not present when he was attacked even though inmates were not allowed in the chapel without supervision. The court held that the inmate's allegations stated a claim that conditions were sufficiently serious to form the basis for an Eighth Amendment violation. The inmate alleged that there was a lack of drinkable water in the prison yard, where temperatures exceeded one hundred degrees. The inmate also alleged that conditions in disciplinary segregation created serious health hazards, including toilets that did not work, sinks that were rusted, and stagnant pools of water that were infested with insects. (Calipatria State Prison, California)

U.S. Appeals Court
ISOLATION
SEGREGATION
MEDICAL CARE

Jarriett v. Wilson, 414 F.3d 634 (6th Cir. 2005). A prisoner brought a civil rights action against prison officials under the Eighth Amendment, alleging deliberate indifference to his serious medical needs. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the prisoner only had an unrecoverable "de minimis injury" for the purposes of his civil rights claim, which was subject to the provisions of the Prison Litigation Reform Act (PLRA). The court found that the officials' refusal to give the prisoner medical treatment was not objectively unreasonable. The prisoner had been put in a small strip cage and held there for 12 hours. He experienced swelling, pain and cramps in his legs as a result, but these injuries were not serious enough to mention to medical staff on the day of his release from the strip cage, or two days later. When he mentioned them two weeks later there were no medical findings. Prison staff had checked on the prisoner's assertions when he told them that he had a leg injury, before they placed him in the strip cage. The prisoner had been placed in the prison's segregation unit for fighting with another inmate. While in segregation, he went on a hunger strike to protest various prison conditions. His cellmate was required to eat his meal in a strip cage in the segregation unit so he would not pass any food to the prisoner during the hunger strike. The strip cage is a mesh steel cage with a small hole through which clothes or other items can be passed. When they later suspected that the prisoner was hiding food in his cell, they placed him in another strip cage next to his cellmate and ordered him to strip. (Trumbull Correctional Institution, Ohio)

U.S. Appeals Court
SMOKE

Kelley v. Hicks, 400 F.3d 1282 (11th Cir. 2005). A prisoner brought an action under § 1983 alleging that prison officials were deliberately indifferent to his future health by allowing him to be exposed to harmful levels of environmental tobacco smoke while he was incarcerated. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court held that the prisoner failed to establish that the warden and assistant warden were deliberately indifferent to the prisoner's future health. The court noted that the facility had a no-smoking policy in place, and any prisoner caught smoking within the facility would be disciplined. According to the court, the prisoner failed to show that the ventilation system was not sufficient. The court found that the prisoner showed at most, that the warden and assistant warden were negligent in enforcing the non-smoking policy. (Coffee County Correctional Facility, Georgia)

U.S. District Court
LIGHTING

King v. Frank, 371 F.Supp.2d 977 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging undue restrictions on telephone usage and access to written publications, improper cell illumination, and failure to provide adequate mental health care. The district court granted summary judgment in favor of the officials. The court held that the inmate was not deprived of a basic human need by the presence of a constantly illuminated nine-watt fluorescent light in his cell, even though he alleged that the light caused him sleeplessness and other problems. The court noted that a registered nurse and a psychologist both examined the

inmate and concluded that he suffered no ill effects. The court found that the mental health care that the inmate received was adequate, noting that the inmate received treatment not only from the prison's psychological services unit, but also from his unit's supervisor as well. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
SMOKE

Larson v. Kempker, 405 F.3d 645 (8th Cir. 2005). A state inmate brought an action under § 1983 and the Prison Litigation Reform Act (PLRA), alleging that he was not adequately protected from exposure to second-hand cigarette smoke while he was imprisoned. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed, finding that the inmate was not entitled to a preliminary injunction. The court held that there was no objective evidence that the inmate was subjected to unreasonably high levels of environmental tobacco smoke (ETS) and no scientific tests were conducted to establish the levels of ETS in his cell. (Crossroads Correctional Center, Missouri)

U.S. Appeals Court
SMOKE

Larson v. Kempker, 414 F.3d 936 (8th Cir. 2005). An inmate brought a civil rights action against prison officials alleging that he was exposed to excessive cigarette smoke while he was confined. The district court awarded summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed, finding that evidence was insufficient to establish that the inmate was exposed to unreasonable levels of environmental tobacco smoke (ETS). The court noted that the inmate's expert performed no scientific tests to establish the level of ETS in the inmate's cell, and the inmate did not present any other reliable basis to estimate levels of ETS to which he was exposed, or evidence concerning how those levels of ETS would affect his future health. (Crossroads Correctional Center, Missouri)

U.S. District Court
IDLENESS
SAFETY

Little v. Shelby County, Tenn., 384 F.Supp.2d 1169 (W.D.Tenn. 2005). An inmate brought a § 1983 action against a county and sheriff, alleging that he had been raped in jail in violation of his Eighth Amendment rights. The county stipulated to liability and an order of injunctive relief was issued. Later, the district court found the county in contempt, and the county sought to purge itself of the contempt finding. The court entered a purgation order. The court held that the county and sheriff complied with the Eighth Amendment and purged themselves of contempt through the adoption of a structured reform to correct conditions that included violence, rape and gang control among inmates. In reaching its conclusion, the court considered whether officials took all reasonable steps within their power to comply with the order, which included whether they marshaled their own resources, asserted their highest authority, and demanded the results needed from subordinate persons and agencies in order to effectuate the course of action required by the order. The court praised the county, noting that it had adopted a focused, systemic and information-driven structural reform based on critical expert assessment of essential institutional functions. The county adopted a 14-point remedial scheme that included implementing direct supervision management of inmate cellblocks, improving population management, collecting and utilizing data, and installing an objective inmate classification system. (Shelby County Jail, Tennessee)

U.S. District Court
SAFETY

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

U.S. District Court
TEMPERATURE
VENTILATION

Moody v. Kearney, 380 F.Supp.2d 393 (D.Del. 2005). A state inmate filed a § 1983 action alleging that prison officials locked him in an unventilated room, causing him to suffer a severely debilitating heat stroke. The district court dismissed the case and the inmate appealed. The appeals court reversed and remanded. On remand, the district court granted summary judgment for the defendants in part, and denied it in part. The court held that the inmate stated a claim for deliberate indifference to his serious medical needs and that fact issues remained as to whether a private contractor that provided medical services for the prison had a policy of not protecting vulnerable inmates from high temperatures. The inmate alleged that he was receiving anticholinergic medication and was therefore particularly vulnerable to heat stroke, and that prison officials knew about this vulnerability but acted with deliberate indifference by keeping him in a room with no windows, no ventilation, or access to running water when the temperature inside the facility was 120 degrees. (State Correctional Institution, Georgetown, Delaware)

- U.S. Appeals Court
SMOKE
- 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. District Court
ISOLATION
LIGHTING
- Scarver v. Litscher*, 371 F.Supp.2d 986 (W.D.Wis. 2005). A state prison inmate sued officials seeking damages for their alleged indifference to his illness and challenging his conditions of confinement. The district court entered judgment in favor of the officials. The court held that the officials did not show deliberate indifference to the inmate's mental illness condition, because he was examined and prescribed various antipsychotic medications. The inmate alleged that the only deficiency in his treatment was that officials failed to provide art supplies when they were requested. The court found that there were fact issues as to whether the inmate was subjected to conditions that were severe enough to violate the Eighth Amendment, but that the officials had qualified immunity from the inmate's damages suit. The court held that placing the mentally ill inmate in a continuously-illuminated maximum security cell without windows was not clearly established to be an Eighth Amendment violation at the time they placed the inmate in the most extreme isolation section of the maximum security prison. (Wisconsin Secure Program Facility)
- U.S. Appeals Court
HYGIENE
SANITATION
SEGREGATION
TOILETS
- 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. Appeals Court
SMOKE
VENTILATION
- Talal v. White*, 403 F.3d 423 (6th Cir. 2005). An inmate brought an action against a state corrections department and individual officials alleging that his exposure to environmental tobacco smoke (ETS) violated his Eighth Amendment rights. The district court dismissed the claim and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner stated a claim that satisfied the objective component of the test for determining deliberate indifference based on exposure to ETS, by alleging that he had been subjected to excessive levels of ETS at the hands of both staff and other inmates and that the prison's ventilation system merely re-circulated smoke-filled air. The inmate provided medical documentation that he suffered from an ETS allergy and establishing that smoke caused him sinus problems and dizziness. The inmate's complaint and exhibits indicated that prison officials were aware of the inmate's ETS allergy and that they smoked and allowed prisoners to smoke in the prison's non-smoking units. (Turney Center Industrial Center, Tennessee)
- U.S. Appeals Court
EXERCISE
MATTRESS
- 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. (Pontiac Correctional Center, Illinois)
- U.S. District Court
LIGHTS
LIGHTING
- Wills v. Terhune*, 404 F.Supp.2d 1226 (E.D.Cal. 2005). A state prison inmate brought a § 1983 action alleging that constant illumination in the prison's security housing unit constituted cruel and unusual punishment. The inmate moved for a preliminary injunction. The court denied the motion. The court held that the constant illumination did not constitute an unsafe condition of confinement and that the defendants established a valid security purpose for the lighting. The inmate alleged that the low wattage bulb prevented his sleep, but conceded that it was not bright enough to read or write by. (California State Prison, Corcoran)

2006

- U.S. District Court
SMOKE
- Abdullah v. Washington*, 437 F.Supp.2d 137 (D.D.C. 2006). An inmate brought a pro se civil rights action under § 1983 against the District of Columbia and certain jail officials, in their individual and official capacities, seeking damages related to his alleged exposure to second-hand tobacco smoke while confined at a jail. The district court granted the officials' motion to dismiss in

part, and denied in part. The court held that the inmate's allegations that he was subjected to an intolerable level of second-hand tobacco smoke while confined at the jail, and that jail officials were deliberately indifferent to his condition because they did not resolve the numerous grievances he filed on the issue, were sufficient to support an Eighth Amendment claim based on exposure to environmental tobacco smoke (ETS). The court found that the inmate's Eighth Amendment right to be free from levels of second-hand smoke that posed an unreasonable risk of serious damage to the inmate's future health was clearly established, and thus, the officials were not entitled to qualified immunity. (Dist. of Columbia Dept. Corrections, Central Det. Facility)

U.S. District Court
HEARING IMPAIRED

Arce v. O'Connell, 427 F.Supp.2d 435 (S.D.N.Y. 2006). A purportedly hearing-impaired inmate brought a pro se suit against employees of a corrections department, alleging that they violated his rights under the Americans with Disabilities Act (ADA), as well as the Eighth and Fourteenth Amendments, by failing to provide reasonable accommodations for his hearing impairment and retaliating against him after he filed grievances regarding the lack of such accommodations. The defendants moved for summary judgment and the court dismissed the case. The district court held that the inmate was not a member of the class protected by a consent decree addressing the treatment of deaf or hard-of-hearing inmates and thus, he lacked standing to move for contempt alleging violations of the decree. The court found that to the extent the inmate suffered from a hearing loss, it was not such as would prevent him from participating fully in "activities, privileges, or programs" as required for him to come within the protections of the consent decree. (New York State Department of Correctional Services)

U.S. District Court
SMOKE

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. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
HEARING IMPAIRED

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 available from the commissary. (Wende Correct'l Facility, N.Y.)

U.S. District Court
HEARING IMPAIRED

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling

appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. Appeals Court
SEGREGATION
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
FOOD

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

U.S. District Court
SMOKE

George v. Smith, 467 F.Supp.2d 906 (W.D.Wis. 2006). A state prisoner sued prison officials under § 1983, alleging deprivation of his free speech rights and deliberate indifference to his serious medical needs. The officials moved for summary judgment and the district court granted the motion in part and stayed in part. The court held that: (1) the officials' ban on the prisoner's receipt of a newsletter on the ground that the newsletter solicited gifts did not violate the prisoner's free speech rights; (2) a prohibition against the prisoner possessing an atlas did not violate his free speech rights; (3) the officials did not violate the prisoner's speech rights in concluding that a magazine advocated behavior consistent with a gang and thus was prohibited by regulation; and (4) the prisoner was not exposed to unreasonably high levels of environmental tobacco smoke. The court found that the prisoner was not exposed to unreasonable levels of environmental tobacco smoke, where the only smoking allowed in the prison was outdoors, and he was not required to stand or sit next to staff or inmates while they were smoking outdoors. The court noted that medical records revealed that the prisoner was seen for complaints relating to asthma only four times in three years, and that he did not claim second-hand smoke was a potential cause of the first three flare-ups. (Oshkosh Correctional Institution, Wisconsin)

U.S. Appeals Court
CLOTHING
FLOOR-SLEEPING
TOTALITY OF
CONDITIONS
ISOLATION

Gillis v. Litscher, 468 F.3d 488 (7th Cir. 2006). A state prisoner brought a § 1983 claim against prison officials, alleging that a behavioral modification program imposed on him violated his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court vacated and remanded, finding that fact issues precluded summary judgment. According to the court, there were fact issues as to whether the prisoner, who was subjected to a behavioral modification program, was denied the minimal civilized measure of life's necessities and whether prison officials acted with disregard of a substantial risk of serious harm to the prisoner. The appeals court opinion opened with the following statement. "*Stripped naked in a small prison cell with nothing except a toilet; forced to sleep on a concrete floor or slab; denied any human contact; fed nothing but 'nutri-loaf'; and given just a modicum of toilet paper-four squares-only a few times. Although this might sound like a stay at a Soviet gulag in the 1930s, it is, according to the claims in this case, Wisconsin in 2002. Whether these conditions are, as a matter of law, only "uncomfortable, but not unconstitutional" as the State contends, is the issue we consider in this case.*" The facility is an all-segregation facility, designed to house recalcitrant inmates. At the time at issue in this case, the facility used

a five-level system of inmate classification, with Level One being the most restrictive. All inmates were placed in Level One upon their arrival at the prison. (Wisconsin Secure Program Facility at Boscobel)

U.S. District Court
FLOOR-SLEEPING
CROWDING
MEDICAL CARE

Hubbard v. Taylor, 452 F.Supp.2d 533 (D.Del. 2006). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds, and a prisoner imprisoned at the same facility asserted a claim under the Americans with Disabilities Act (ADA). The district court granted the defendants' motion for summary judgment and plaintiffs appealed. The appeals court vacated and remanded. On remand, the district court granted summary judgment for the defendants. The court held that requiring the pretrial detainees to sleep on a mattress on the floor of their cells for a period of three to seven months did not violate the detainees' Fourteenth Amendment due process rights, because providing sleeping accommodations on the floor was in response to overcrowding at the facility and was not intended to punish. The court noted that even if the pretrial detainees' constitutional rights were violated by requiring them to sleep on mattresses on the floor, the law was not sufficiently clear so that a reasonable official would understand that what he was doing violated a constitutional right, entitling the officials to qualified immunity. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. District Court
SHOWERS
SANITATION
HYGIENE

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.

According to the court, the inmate did not state a claim that conditions of confinement violated his rights under the Eighth Amendment when he alleged that showers were cold, worms were coming in through a drain, and his personal hygiene materials had been lost during a move from one cell to another. The court found that these problems were insufficiently serious.

The court held that the inmate stated claim that conditions of confinement violated his rights under Eighth Amendment, when he alleged that officers frequently denied inmates the opportunity to use a rest room, as a disciplinary measure, forcing them to urinate into objects including latex gloves. (Ohio Dept. of Youth Services, Marion Juvenile Correctional Facility)

U.S. District Court
DOUBLE CELLING
CELL CAPACITY
ODORS
OVERCROWDING
SANITATION
SMOKE

Jones v. Goord, 435 F.Supp.2d 221 (S.D.N.Y. 2006). Inmates brought an action against New York prison officials, challenging the double-celling policy at maximum-security prisons. Double-celling is a practice in which two prisoners are housed in a cell originally designed for one person. The complaint was filed in 1995, and was effectively stayed for some time pending litigation of a companion case challenging the same practice in medium security prisons. After a full trial on the merits, the district court in the medium security case denied the plaintiffs any relief.

The district court dismissed all of the inmates' class claims, but reserved decisions on individual plaintiffs' claims for damages under the Eighth Amendment and the First Amendment. The court held that the practice of double-celling, and the undesirable conditions allegedly created by double-celling of inmates, including facts that inmates were forced to sleep near a toilet, were exposed to cellmates' odors, and kept excess personal property in their cells, did not violate the Eighth Amendment.

The court found that Muslim inmates' claim that double-celling interfered with their First Amendment right to free exercise of religion was not moot after they were no longer being double-celled, where many of the inmates were double-celled on numerous occasions for short periods of time, and the policy of double-celling inmates continued. The defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. According to the court, even assuming that the policy of double-celling some inmates in New York's maximum-security prisons burdened religious practices of Muslim inmates by making it difficult for them to pray in their cells. According to the court, the policy was rationally related to the legitimate goal of finding sufficient bed space to house all maximum security inmates, and thus did not violate the inmates' right to free exercise of religion. The court ruled that the inmates were not entitled to amend their complaint to add a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The court noted that the Eighth Amendment does not guarantee prisoners freedom from any and all sorts of unsavory environs, and that to the extent that conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.

According to the court, the practice of double-celling inmates did not result in a substantial risk of serious harm to inmates due to violence, in violation of the Eighth Amendment, where incident reports indicated that six years after the implementation of the double-celling policy, inmates generally faced a lower risk of assault than they did before the policy was implemented, and there was no evidence that any under-reporting of assaults affected the reporting of incidents in double cells more than the reporting of incidents generally.

The court also found that injury and disease allegedly caused by double-celling did not create

an unreasonable risk of serious damage to inmates' health, in violation of the Eighth Amendment, noting that although nine inmates had been injured getting into or out of the top bunk in their cells, and six inmates caught colds from their cellmates, there was no evidence that the design or placement of the bunks was unsafe, or that any inmate actually contracted, or was even exposed to, a serious disease from his cellmate in a double cell.

The court held that alleged mistakes made by New York prison officials in screening dangerous inmates before placing them in double cells in maximum security prisons did not show that New York's double-celling policy subjected inmates to a substantial risk of serious harm, in violation of the Eighth Amendment, where the rate of inmate assaults had declined in the six years after the double-celling policy was implemented.

The court ruled that alleged exposure to excessive levels of secondhand smoke in double cells did not create an unreasonable risk of serious damage to inmates' future health, in violation of the Eighth Amendment, where the state had banned smoking in all its prison facilities, and there was no evidence that inmates in double cells were exposed to unreasonably high levels of secondhand smoke after that policy was adopted. (New York Dept. of Correctional Services)

U.S. District Court
SANITATION

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. Appeals Court
PRETRIAL
DETAINEES
FOOD
RESTRAINTS

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 arrestee's conditions of confinement civil rights claim for the five-day period between his arrest and his preliminary probable cause hearing was required to be analyzed under the Fourth Amendment, using the "objectively unreasonable" standard, rather than under the Eighth Amendment's "deliberate indifference" standard. The court held that the question was for the jury. The arrestee presented evidence that he was shackled to the wall of an interrogation room for four days, that he was deprived of food, drink, and sleep, and that he was forced to yell for a long period of time before being let out to use the bathroom, and that the defendant officers denied such treatment. 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
MATTRESS
SEGREGATION

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
TEMPERATURE
SANITATION
VENTILATION

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 noted that the inmate's alleged weight loss was contrary to the uncontroverted facts, where the inmate did not allege that he was not fed while at jail but that he was not allowed to exercise out of his cell, and it was not clear how a lack of exercise would have caused weight loss.

The court found that the lack of outdoor exercise for the pretrial detainee at a small county jail did not violate due process, where the cells were large, the detainee did a wide variety of inside exercises during his stay at jail, and no physical deterioration occurred due to failure to obtain outdoor exercise.

The court held that alleged inadequate temperature-control and ventilation, the presence of insects, and a lack of cleaning at the county jail did not violate the due process rights of pretrial detainee, where jail cells were heated and cooled by air conditioning that was on the same ventilation system as the rest of the courthouse in which the jail was located, detainees had the ability to open cell windows and had fans to use in the Summer, detainees were allowed additional blankets in Winter, the jail and courthouse were treated for insects on a monthly basis, and cleaning materials were provided to detainees to use in their cells. (Edwards County Jail, Kansas)

U.S. District Court
HANDICAPPED
INMATES
SHOWERS

Partelow v. Massachusetts, 442 F.Supp.2d 41 (D.Mass. 2006). A state prisoner whose leg had been amputated brought an action against numerous defendants, including a county correctional center and sheriff, alleging that failure to provide him with handicapped-accessible shower facilities during the renovation of his housing unit violated his federal and state civil rights. The district court granted summary judgment in favor of the defendants. The court held that the officials provided alternative accessible facilities, precluding claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act. The court noted that officials provided the prisoner with a chair for use in the standard shower, assigned him to a housing unit with handicapped-accessible showers, promptly transferred him back to his original unit at his request, and ultimately made arrangements for him to shower in the medical unit. The court held that the prisoner could not establish an Eighth Amendment claim, where officials allowed the prisoner to shower in medical unit and made other such accommodations imposing only minor impediments and delays. (Hampden County Correctional Center, Massachusetts)

U.S. District Court
CELL CAPACITY
CROWDING
FLOOR-SLEEPING
SANITATION
TEMPERATURE

Poole v. Taylor, 466 F.Supp.2d 578 (D.Del. 2006). A former pretrial detainee filed a § 1983 action alleging unconstitutional conditions of confinement, and that he was denied adequate medical care. The district court granted the defendants' motion for summary judgment. The court held that the detainee's due process rights were not violated when he was required to sleep on a mattress on the floor for over six months in an overcrowded facility that experienced sporadic hot and cold temperatures and insect and rodent infestations. The court noted that the officials had issued numerous work orders for temperature repairs and pest control, the detainee was not denied access to toilet facilities, the officials determined that triple-celling pretrial detainees was a method to deal with their overcrowded facilities, and there was no evidence of intention on the officials' part to punish the detainee. The court found that officials were not deliberately indifferent to the detainee's serious medical needs, in violation of the Due Process Clause, even though he was not hospitalized or sent to a plastic surgeon after he sustained a large cut over his right eye. The court noted that the detainee's treatment included sutures, bandaging of his wound, and administration of medication, as well as a follow-up visit. The detainee was given instructions to contact the medical department for any perceived problems with the wound, and the detainee did not seek additional treatment. (Multi-Purpose Crim. Justice Facility, Delaware)

U.S. Appeals Court
LIGHTING
NOISE
SEGREGATION

Scarver v. Litscher, 434 F.3d 972 (7th Cir. 2006). A state prisoner brought a civil rights action against officials at a "supermax" prison, alleging that his conditions of confinement had aggravated his mental illness. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court affirmed, finding that the officials did not unconstitutionally subject the prisoner to cruel and unusual punishment, absent evidence that they knew that the conditions were making his mental illness worse. According to the court, prison authorities must be given considerable latitude in the design of measures for controlling homicidal maniacs without exacerbating their manias beyond what is necessary for security. The prisoner alleged that the heat in the cells in the Summer interacted with the his antipsychotic drugs and caused him extreme discomfort, and that the constant illumination of the cells also disturbs psychotics. The prisoner alleged that the low level of noise, without audiotapes, a radio, or any source of sound, prevented him from stilling the voices in his head. (Wisconsin Secure Pr

U.S. Appeals Court TEMPERATURE	<i>Spencer v. Bouchard</i> , 449 F.3d 721 (6th Cir. 2006). A former pretrial detainee brought a pro se § 1983 action against a county sheriff and officials of the sheriff's office, alleging overcrowding and inadequate shelter at the jail in violation of Due Process Clause. The district court granted summary judgment for the defendants, and detainee appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The court held that the detainee's evidence that county officials had failed to address serious and obvious problems with conditions, namely a continuously cold and wet cell area, for a period of months, especially given additional evidence including officials' alleged wearing of winter coats inside jail, raised a fact issue as to whether officials had been deliberately indifferent to a serious deprivation, precluding summary judgment for the officials. (Oakland County Jail, Michigan)
U.S. District Court CRIPA- Civil Rights of Institutionalized Persons Act PRETRIAL DETAINEES FIRE SAFETY CONDITIONS	<i>U.S. v. Terrell County, Ga.</i> , 457 F.Supp.2d 1359 (M.D.Ga. 2006). The federal government brought a Civil Rights of Institutionalized Persons Act (CRIPA) action against a county, county sheriff, and various other county officials, seeking a determination that county jail conditions were grossly deficient in violation of the Fourteenth Amendment. The district court granted the government's motion for summary judgment. The court held that the sheriff and other officials were deliberately indifferent to the jail's gross deficiencies in the areas of medical and mental health care for inmates, protection of inmates from harm, environmental health and safety of inmates, and fire safety, in violation of the due process clause. The court noted that the lack of funds is not a defense to, nor legal justification for, unconstitutional conditions of a jail, for the purpose of analyzing a deliberate indifference claim under the due process clause of the Fourteenth Amendment. Even if a defendant argues that it is planning or working towards construction of a new jail to remedy the unconstitutional conditions at the current facility, the failure to implement interim measures to alleviate those conditions demonstrates deliberate indifference, according to the court. (Terrell County, Georgia)
U.S. District Court LIGHTING EQUAL PROTECTION	<i>Walker v. Woodford</i> , 454 F.Supp.2d 1007 (S.D.Cal. 2006). State inmates filed a § 1983 action alleging that prison officials violated their Eighth Amendment rights by refusing to turn off lights in their cells. The inmates alleged that the light prevented them from sleeping adequately, and that this has caused a variety of sleep-related problems. The district court ruled that the state prison's policy prohibiting inmates from covering lights in their cells did not violate the inmates' equal protection rights, even though the policy did not apply in other facilities in the state, absent an allegation that prison officials implemented the policy with the intent to discriminate against inmates, that other inmates at the facility were treated differently, or that inmates at other facilities were similarly situated. (Calipatria State Prison, California)
U.S. District Court SANITATION TEMPERATURE	<i>White v. Crow Ghost</i> , 456 F.Supp.2d 1096 (D.N.D. 2006). An arrestee brought a <i>Bivens</i> action against personnel of a jail operated by the Bureau of Indian Affairs (BIA), alleging failure to provide adequate medical care, unsanitary conditions, and delayed or prevented bond hearings. The district court granted summary judgment for the defendants. The court held that jail officials were not deliberately indifferent to the arrestee's medical needs, in violation of his Eighth Amendment rights, where officials provided the arrestee with medical care promptly after learning of his suicide gestures or attempts, and again upon learning he might have an infection. The court noted that when the arrestee's need for medication was established, officials ensured that the medications were administered. The court found that the officials were not deliberately indifferent to any risk of harm to arrestee from his placement in two different, allegedly cold and unsanitary jail cells for a total of four days, and thus such placement did not rise to the level of an Eighth Amendment violation. The court noted that the arrestee was placed in those cells after his suicide gestures or attempts so that he could be monitored, his clothing and bedding was removed for his protection after he tried to hang himself, and cleaning supplies were withheld to protect him. (Standing Rock Agency, Fort Yates Detention Center, North Dakota)
U.S. District Court SMOKE	<i>Williams v. District of Columbia</i> , 439 F.Supp.2d 34 (D.D.C. 2006). A former inmate filed a pro se § 1983 action seeking damages for alleged exposure to second-hand tobacco smoke while he was confined in jail. The district court denied the defendants' motion for summary judgment. The court held that the former inmate's allegations that while he was in jail he was subjected to an intolerable level of environmental tobacco smoke (ETS), that such exposure caused health problems at the time he was confined and posed a risk to his future health, and that the individual defendants were deliberately indifferent to his condition, if true, were sufficient to establish an Eighth Amendment violation. The court found that genuine issues of fact existed, precluding summary judgment. The inmate alleged that inmates and staff in his housing unit smoked tobacco, the unit did not have adequate ventilation or windows or doors that could be opened to remove the tobacco smoke, and his cellmate smoked five packs of cigarettes a day and kept a homemade toilet paper wick burning at all times for the purpose of lighting cigarettes. The inmate said that he experienced nausea and nosebleeds, and he filed a number of grievances. (District of Columbia Department of Corrections, Central Detention Facility)
2007	
U.S. District Court CROWDING SANITATION TEMPERATURE	<i>Banks v. York</i> , 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 dismissal of the detainee's § 1983 claims of cruel and unusual punishment at the District of Columbia jail based on lack of reading material, lack of recreational equipment, failure of the commissary to stock items such as lotions, skin oils, hair oils, and peanut butter, the detainee's exposure to the stench created by regular sewage backups, as well as the jail's use of bunk beds without ladders as required under the Prison Litigation Reform Act (PLRA) because the detainee did not allege that he

suffered any physical injury. Instead, the detainee alleged mental and emotional injuries. According to the court, the alleged conditions from overcrowding at a District of Columbia jail-- showers infested with bacteria, standing water, various diseases and hundreds of unsanitary and defective mattresses, some of which contained roaches and other insects, did not constitute the deprivation of basic human needs, as required for jail overcrowding to constitute cruel and unusual punishment. The court found that the detainee's allegations that due to lack of heating and ventilation at the jail he suffered from temperatures ranging from 30 to 40 degrees during the winter, that he was not provided with sufficient blankets for cold jail cells, and that such actions were taken with deliberate indifference to his needs and pursuant to policy of Department of Corrections (DOC) were sufficient to state a claim under § 1983 for cruel and unusual punishment through deliberate indifference to a serious medical need. The court noted that warmth is a basic human need, the deprivation of which can amount to a violation of Eighth Amendment protection against cruel and unusual punishment. (Central Detention Facility, D.C. and Correctional Treatment Facility operated by the Corrections Corporation of America)

U.S. District Court
PRETRIAL DETAINEE
CROWDING
FLOOR-SLEEPING
MATTRESS
SANITATION

Desroche v. Strain, 507 F.Supp.2d 571 (E.D.La. 2007). A pre-trial detainee brought a pro se, in forma pauperis action against prison officials, alleging improper conditions of confinement, negligent medical treatment, invasion of privacy, and excessive force. The district court dismissed the action. The court held that the alleged conditions of the detainee's confinement, including being required to sleep on the floor of an overcrowded holding tank, being deprived of a mattress, and being provided with water only in a dirty sink, if proven, did not violate his Eighth Amendment or due process rights, given that he experienced such conditions for only ten days, and that use of sink did not cause him to suffer disease or other serious harm. (River Parish Correction Center, Louisiana)

U.S. District Court
TEMPERATURE

Hadix v. Caruso, 492 F.Supp.2d 743 (W.D.Mich. 2007). Prisoners brought a suit to correct unconstitutional prison conditions necessary for prisoner health and safety, and requested injunctive relief as to a heat-related injury. The district court entered an injunction. The court held that prison officials may not, consistent with Eighth Amendment values, cause the expected deaths of prisoners subject to heat-illness by exposing them to high heat and humidity conditions. According to the court, the requirements for safe Eighth Amendment custody are violated by housing high-risk inmates in facilities which are routinely at heat index levels above 90 during summer months, when it is known that such heat conditions will reliably cause heat injury and death. The court ruled that the prisoners were entitled to an injunction requiring that all prisoners classified at high-risk for heat-related injury be housed in areas in which the heat index was reliably maintained below a heat index of 90. The court noted that the injunction was necessary to prevent irreparable harm, including bodily injury and death, and that the scope of the injunction was narrowly tailored and was the least intrusive means of correction of the Eighth Amendment violation. (Southern Michigan Correctional Facility, Charles E. Egeler Correctional Facility)

U.S. Appeals Court
CIVIL COMMITMENT

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
DORMITORIES
DOUBLE CELLING

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
LIGHTING
OUT OF CELL TIME

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. 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
HYGIENE
RESTRAINTS
TOILETS

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
OVERCROWDING
STAFFING

Roberts v. County of Mahoning, Ohio, 495 F.Supp.2d 784 (N.D.Ohio 2007). Pretrial detainees and convicted prisoners being held in the custody of an Ohio sheriff at two correctional facilities that were allegedly understaffed and overcrowded brought a § 1983 class action against the county, sheriff, and county commissioners, alleging that conditions of confinement at those facilities were unconstitutional. The district court appointed a special master for the remedial phase of the litigation. A three-judge panel of the district court approved the proposed stipulated order. The district court held that the appointment of a special master had accomplished the court’s original objective and the appointment would be terminated. The court noted that the special master’s reports and other actions had fulfilled the requirement that he “assist the parties, specifically the Defendants, in attempting to find a solution to the problems which created the unconstitutional conditions in the Jail,” and his fourth report had established a mechanism for the litigation’s actual resolution. The first two reports addressed a narrowly avoided crisis that would have resulted from massive layoffs of security staff as a result of a budget shortfall in the county. The third report, filed after passage of a successful ballot issue increasing revenues available for the funding of the MCJC, described the parties’ continued cooperation in attempting to resolve the problems facing the jail, in particular, the need for accelerated collection of the proceeds from the successful bond issue. The court concluded “These reports, to which no party filed any objection, were instrumental in establishing an informational foundation for discussions of possible remedies to the phenomenon of chronic and serious crowding in the jail.” (Mahoning County Justice Center, Ohio)

U.S. District Court
OVERCROWDING
STAFFING

Roberts v. Mahoning County, 495 F.Supp.2d 719 (N.D.Ohio 2007). Pretrial detainees and convicted prisoners being held in the custody of an Ohio sheriff at one of two correctional facilities that were allegedly understaffed and overcrowded brought a § 1983 class action against the county, sheriff, and county commissioners alleging that conditions of confinement at those facilities were unconstitutional. The district court held that there was clear and convincing evidence that crowding was the primary cause of the violation of a federal right, and that no other relief besides a prisoner release order would remedy that violation. The release order provided for incarceration of all violent felons and for reopening of all jail facilities under the control of the county to maximum occupancy, while at the same time protecting the constitutional rights of inmates in the county jail facilities. (Mahoning County Justice Center, Ohio)

U.S. District Court
FLOOR-SLEEPING

Thomas v. Baca, 514 F.Supp.2d 1201 (C.D. California 2007). Pre-trial detainees and post-conviction prisoners who alleged they were required to sleep on the floor of county jail facilities brought a civil rights class action suit against a sheriff in his individual and official capacities. The prisoners moved for summary adjudication of certain issues and the sheriff moved for summary judgment, or in the alternative, for summary adjudication. The district court granted the motions in part and denied in part. The court held that undisputed evidence established the custom of forcing inmates to sleep on the floor and that this custom violated the Eighth Amendment, even if the majority of inmates had bunks and floor-sleeping inmates were provided with mattresses. The plaintiffs had presented undisputed evidence that over 24,000 instances of floor sleeping occurred in the jail system in a four month period. The court found that the sheriff was entitled to qualified immunity from liability for the jail’s custom of forcing some inmates to sleep on the floor, where it was not clearly established during the 2002 to 2005 period covered by the suit, that providing inmate with a mattress would not avoid a violation or that floor sleeping

violated the Eighth Amendment rights of convicted inmates as well as due process rights of pretrial detainees. (Los Angeles Sheriff Department, California)

U.S. Appeals Court
PRETRIAL DETAINEES
EXERCISE
MEDICAL CARE
VENTILATION

U.S. v. Ramirez-Gutierrez, 503 F.3d 643 (7th Cir. 2007). A defendant pled guilty in the district court to reentering the United States illegally after being deported. On appeal, the court held that the conditions of the defendant's pretrial confinement were not so substandard or onerous as to warrant special consideration at sentencing, and the sentencing judge considered the defendant's claim that he committed crimes because of substance abuse problem. The defendant complained that he was unable to obtain care for his broken tooth, lived in poorly ventilated quarters, and was given inadequate opportunity to exercise during his two and a half month detention. (Kankakee County Detention Center, Illinois)

U.S. Appeals Court
SEGREGATION
SANITATION
FLOOR-SLEEPING
TOILET

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
EXERCISE
ISOLATION
SEGREGATION

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. District Court
CIVIL COMMITMENT
DOUBLE CELLING

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. (Mass. Treatment Center)

U.S. Appeals Court
TEMPERATURE

Bibbs v. Early, 541 F.3d 267 (5th Cir. 2008). A state inmate brought a claim under § 1983 against corrections officers alleging that he was subjected to severe cold in retaliation for filing grievances. The district court granted the officers' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether subjecting the inmate to four straight nights of 20-degree temperatures was sufficiently severe to deter the inmate from filing future grievances. The court also found a genuine issue of material fact as to whether the inmate's actions of writing grievances against corrections officers caused the officers to retaliate by turning on "purge" fans, subjecting the inmate to cold temperatures. (Clements Unit, Amarillo, Texas)

U.S. District Court
SEGREGATION
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. District Court
PLUMBING
SAFETY
SANTITATION
TOILETS

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

U.S. District Court
LIGHTING
RESTRAINTS

Davis v. Peters, 566 F.Supp.2d 790 (N.D.Ill. 2008). A detainee who was civilly committed pursuant to the Sexually Violent Persons Commitment Act sued the current and former facility directors of the Illinois Department of Human Services' (DHS) Treatment and Detention Facility (TDF), where the detainee was housed, as well as two former DHS Secretaries, and the current DHS Secretary. The detainee claimed that the conditions of his confinement violated his constitutional rights to equal protection and substantive due process. After a bench trial, the district court held that: (1) the practice of searching the detainee prior to his visits with guests and attorneys violated his substantive due process rights; (2) the practice of using a "black-box" restraint system on all of the detainee's trips to and from court over a 15-month period violated his substantive due process rights; (3) requiring the detainee to sleep in a room illuminated by a night light did not violate the detainee's substantive due process rights; (4) a former director was not protected by qualified immunity from liability for the constitutional violations; and (5) the detainee would be awarded compensatory damages in the amount of \$30 for each hour he wore the black box in violation of his rights. The court found that a 21-day lockdown following an attempt at organized resistance by a large number of detainees at the facility, shortly after the breakout of several incidents of violence, was not outside the bounds of professional judgment for the purposes of a substantive due process claim asserted by the detainee. (Treatment and Detention Facility, Illinois)

U.S. District Court
CELLS
TEMPERATURE
TOILETS

Decker v. Dunbar, 633 F.Supp.2d 317 (E.D.Tex. 2008). *Affirmed* 358 Fed.Appx. 509. An inmate filed a pro se § 1983 action against prison officials, asserting Eighth and Fourteenth Amendment violations, among other constitutional claims. The officials moved for summary judgment and the district court granted the motion. The court held that the officials' conduct in delaying the inmate's use of a restroom for 30 minutes did not amount to deliberate indifference to his medical needs in violation of the Fourteenth Amendment. According to the court, the delay in taking the inmate to a restroom was caused by the need to conduct a prisoner count, and the inmate failed to demonstrate that he suffered any injury as a direct result of the delay.

The court found that placement of the inmate in a holding cell for 90 minutes on a day that the outside temperature reached 95 degrees did not amount to cruel and unusual punishment in violation of the Eighth Amendment. The court noted that even assuming the holding cell was extremely hot, 90 minutes was not an excessive period of time rising to the level of a constitutional violation.

The court held that the inmate failed to demonstrate that his alleged lack of access to the prison's law library resulted in dismissal of his multiple previously filed criminal appeals and civil cases, and thus the inmate failed to establish an actual injury, as required to prevail on the claim that he was denied access to court. (Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. District Court
EMOTIONAL
DISTRESS

Estate of Trentadue v. U.S., 560 F.Supp.2d 1124 (W.D.Okla. 2008). In a suit arising from the death of a special housing unit (SHU) inmate at a Federal Transfer Center in Oklahoma, the district court ruled in favor of the plaintiff's family members on their claim for intentional infliction of emotional distress under the Federal Tort Claims Act (FTCA), and awarded a total amount of \$1.1 million in damages to the individual family members. On appeal, the court remanded for additional findings. On remand, the district court held that evidence supported a \$250,000 award to the inmate's wife for the extreme and outrageous actions of the federal government in the aftermath of the inmate's death and prior to her viewing the body, including the failure to inform her in advance of the numerous extensive injuries on his body and the fact that an autopsy had been performed. The court found that the siblings who were present when the numerous, extensive, and unexpected injuries to inmate's body were first discovered were entitled to awards ranging from \$150,000-\$200,000, and brothers who never personally viewed the injuries were entitled to between \$50,000 and \$100,000. The district court held that the plaintiffs' understandable emotional reaction to the inmate's death was needlessly and recklessly intensified by the United States' failure to inform the family in advance as to the existence of the extensive injuries and that an autopsy had been performed, and throughout the trial, the court heard no explanation for the defendant's silence in this regard. The inmate had been returned to prison as a parole violator and was placed in a segregation single cell at his request. The inmate was found hanging in his cell approximately 20 minutes after the previous routine cell check by correctional officers. Other cuts and abrasions found on his body indicated persistent attempts to cause himself

serious injury or death. Permissible items found in the cell supported presumptions that cuts on the body were self-inflicted. (Federal Transfer Center in Oklahoma City, Oklahoma)

U.S. Appeals Court
TEMPERATURE

Gibson v. Moskowitz, 523 F.3d 657 (6th Cir. 2008). The representative of the estate of a mentally disabled inmate who died of dehydration in a state prison brought a § 1983 action against a prison psychiatrist and others, alleging deliberate indifference to serious medical needs, and asserting medical malpractice claims. The district court denied the defendants' motion for summary judgment, and subsequently entered judgment, upon a jury verdict, in favor of the representative. The court awarded \$1.5 million in compensatory damages and \$3 million in punitive damages. The psychiatrist appealed. The appeals court affirmed in part and reversed in part. The court held that evidence was sufficient to support a determination that the inmate had an objectively serious medical condition and that the psychiatrist subjectively ignored the inmate's serious medical needs. The court found that the compensatory damages award was not excessive and that the representative was entitled to recover punitive damages. The court found that the punitive damages award was not excessive. According to the court, the psychiatrist was in charge of the inmate's treatment team, he admittedly was aware that the temperature in the observation room where the inmate was held exceeded 90 degrees, and that the combination of the inmate's medication and the room temperature was potentially deadly. A psychiatric expert testified that the inmate's medication affected the part of the brain that regulated body temperature and dissipated heat, and another medical expert testified that the inmate's dehydration occurred over a period of several days. Evidence was presented that during that period, the inmate lost 42 pounds. (Riverside Correctional Facility, Michigan)

U.S. District Court
HEATING

Hart v. Bertsch, 529 F.Supp.2d 1032 (D.N.D. 2008). A state inmate brought a § 1983 action against prison officials for violations of his constitutional right to receive necessary medical care. The inmate alleged that the officials failed to provide adequate medical care for his serious medical needs because he had been housed in a cell that utilized "steam heat," and that officials had not provided him with a medical alert button necessary due to his sleep apnea. The officials moved for summary judgment. The district court granted the motion. The court held that the officials did not act with deliberate indifference toward the inmate's central sleep apnea condition or alleged sensitivity toward "steam heat," as would have violated the Eighth Amendment prohibition against cruel and unusual punishment. The court noted that the inmate had been subjected to a multitude of physical examinations and diagnostic tests in an effort to diagnose the cause of his breathing complaints, and that the treating physician found no medical or factual basis to support another physician's recommendation that the inmate needed to avoid steam heat. According to the court, the inmate failed to follow through with recommended treatments, and the physician had never received a recommendation that the inmate be provided with a medical alert button, nor would such a procedure have been consistent with the inmate's condition. (North Dakota State Penitentiary)

U.S. Appeals Court
CELL CAPACITY
FLOOR-SLEEPING
OVERCROWDING
PRETRIAL DETAINEES

Hubbard v. Taylor, 538 F.3d 229 (3rd Cir. 2008). Pretrial detainees filed suit under § 1983, challenging conditions of their confinement on Fourteenth Amendment due process grounds. The district court granted the defendants' motion for summary judgment and the detainees appealed. The appeals court vacated and remanded. On remand the district court granted the defendants' renewed motions for summary judgment and the detainees again appealed. The appeals court affirmed. The court held that triple-celling of the pretrial detainees was rationally related to prison officials' legitimate governmental interest in trying to manage overcrowding conditions at the prison, for the purposes of the detainees' claim that triple-celling violated their Fourteenth Amendment due process right. The court found that requiring the detainees to sleep on a mattress on the floor of their cells for a period of three to seven months did not violate the detainees' Fourteenth Amendment due process rights. The court noted that although many pretrial detainees did spend a substantial amount of time on floor mattresses, they also had access to 3,900 square foot dayrooms, there was no evidence that the use of the floor mattresses resulted in disease or the splashing of human waste upon the detainees, and over \$2.8 million dollars had been spent on capital improvements during the past five years to maintain or elevate the living conditions for prisoners. The court noted that even if the detainees' due process constitutional rights were violated by requiring them to sleep on mattresses on the floor, the law was not sufficiently clear so that a reasonable official would understand that what he was doing violated a constitutional right, entitling the prison officials to qualified immunity in the detainees' suit under § 1983 challenging conditions of their confinement. (Multi-Purpose Criminal Justice Facility, Delaware)

U.S. District Court
BEDS
HYGIENE
MATTRESS
MEDICAL CARE
TEMPERATURE

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
ALIENS

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. Appeals Court
HARASSMENT
SAFETY
THREATS

Irving v. Dormire, 519 F.3d 441 (8th Cir. 2008). An inmate in the Missouri penal system filed suit under § 1983 against several employees of a state correctional facility alleging multiple violations of his constitutional rights of due process, access to the courts and freedom from cruel and unusual punishment. The district court granted the defendants' motion for summary judgment on the due process and access to courts claims, but denied the defendants' request for qualified immunity on the Eighth Amendment claim. The parties appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the corrections officers' alleged conduct in opening cell doors so as to allow an inmate to attack the plaintiff inmate was sufficiently serious to support a failure to protect claim. According to the court, the inmate's allegations that a corrections officer made several threats to kill the inmate, have him killed or have him beaten were sufficiently serious to form the basis of an injury, as required to support the inmate's Eighth Amendment claim. The court noted that the inmate's right to be free from threats by corrections officers was clearly established at the time the corrections officer allegedly made death threats against the inmate. According to the court, an officer's alleged conduct in threatening the inmate with a can of pepper spray and another officer's conduct in stating that she wanted the inmate dead did not rise to the level of being objectively credible. The court also held that an officer was on clear notice that his alleged conduct in labeling the inmate a "snitch" or a "rat" unreasonably subjected the inmate to the threat of a substantial risk of serious harm at the hands of his fellow inmates. The officer allegedly made three unsuccessful offers of payment to other inmates to assault the inmate, labeled the inmate a snitch in an effort to induce inmates to attack him and even armed another inmate with a razor blade for use in such an attempt. (Jefferson City Corr'l Center, Missouri)

U.S. Appeals Court
MEDICAL CARE
SMOKING
VENTILATION

Lee v. Young, 533 F.3d 505 (7th Cir. 2008). A former state prisoner brought a pro se § 1983 action against prison officials, alleging that the officials exhibited deliberate indifference to his serious medical needs, in connection with the prisoner's exposure to secondhand smoke that allegedly triggered his asthma. The district court granted summary judgment in favor of the officials, and the prisoner appealed. The appeals court affirmed, finding that the officials were not deliberately indifferent. According to the court, although the prisoner complained to medical staff, the officials did not ignore the medical staff's advice, since no doctor ever recommended that the prisoner be transferred to avoid exposure to the secondhand smoke. The court noted that medical professionals concluded that the prisoner's asthma was controlled. When the prisoner requested a non-smoking cell he was given one, his cellmate was issued a disciplinary ticket when he smoked in their non-smoking cell, and the ventilation system was repaired when the prisoner complained. (Shawnee Correctional Center, Illinois)

U.S. District Court
CLOTHING
NATURAL LIGHT

Lindell v. Schneider, 531 F.Supp.2d 1005 (W.D.Wis. 2008). A prison inmate brought a § 1983 action against state prison employees, claiming violations of his Eighth and First Amendment rights. The defendants moved for summary judgment. The court granted the motion in part and denied the motion in part. The court held that the employees did not exhibit deliberate indifference to the medical condition of the inmate, in violation of the Eighth Amendment, by limiting him to 2.5 hours of exposure to sunlight per week. The court found that the inmate failed to show a health risk associated with his being forced to use unwashed outerwear when exercising. The court ruled that summary judgment was precluded by fact issues as to whether a corrections officer directly told the inmate that he was being denied access to a desired program because he filed complaints, whether another officer failed to intervene when the inmate was told he was being retaliated against, and as to the existence of direct evidence of retaliation. The court noted that there was evidence that two prison security officers directly stated that the inmate was being placed in restricted housing and denied participation in a desired program because he brought administrative complaints. (Wisconsin Secure Program Facility)

U.S. District Court
FAILURE TO PROVIDE
CARE
FOOD
MEDICAL CARE
TEMPERATURE

Murphy v. Gilman, 551 F.Supp.2d 677 (W.D.Mich. 2008). A civil rights action was brought against state prison officials, raising claims arising from the death of a prisoner, who died from dehydration after a four-day period during which he received no medical care and little water and food. A jury found that certain defendants were deliberately indifferent to the prisoner's serious medical needs, the defendants were grossly negligent, and one defendant was liable for intentional infliction of emotional distress. The jury awarded \$250,000 in actual damages, and \$2,500,000 in punitive damages. The defendants moved for judgment as a matter of law, and to stay enforcement of the judgment. The plaintiff filed a motion for a new trial. The district court denied the motions, finding that evidence supported the finding that an official knew of the obvious risks to the prisoner. The court held that punitive damages of \$1,250,000 per prison official defendant was not constitutionally excessive for the dehydration death of a physically vulnerable prisoner, who was trapped without physical necessities or medical care for five days during a heat wave and who was awarded \$250,000 in actual damages. The court noted that evidence established that prison officials kept the prisoner's water turned off, knew that the prisoner was not drinking, and knew the prison was on a heat alert. (Bellamy Creek Correctional Facility, Michigan)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
MATTRESS
OUT OF CELL TIME

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. 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
ADA- Americans with
Disabilities Act
EXERCISE
OUT OF CELL TIME
SEGREGATION

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 and ongoing violations of pretrial detainees' constitutional rights. The court found that an injunction relating to restrictions of detainees' religious rights based on security concerns was narrowly drawn and extended no further than necessary to correct the violation of the federal right of pretrial detainees in administrative segregation. The injunctive order, with its provision for the curtailment or elimination of pretrial detainees' religious rights based on security concerns, provided for no more than a minimum level of ongoing participation in religious activities.

The court held that providing pretrial detainees housed in administrative segregation only 90 minutes of exercise per week, less than 13 minutes per day, constituted punishment in violation of due process standards. The court found that an order requiring that inmates in administrative segregation be permitted exercise at least twice each week for a total of not less than 2 hours per week was necessary to correct the current and ongoing violation.

The court found that the county failed to reasonably accommodate mobility-impaired and dexterity-impaired pretrial detainees in violation of the Americans with Disabilities Act (ADA). The county did not offer any legitimate rationale for maintaining inaccessible bathrooms, sinks, showers, and other fixtures in the housing areas and common spaces assigned to mobility and dexterity impaired detainees, and the county offered no explanation or justification for the significant differences between the vocational and recreational activities available to non-disabled and disabled detainees.

Termination of injunctive orders requiring that inmates be provided with seating while detained in holding cells, or elsewhere, awaiting transport to or from court and requiring that inmates be given at least fifteen minutes within which to complete each meal did not constitute an abuse of discretion since the treatment of detainees in the county's holding cells and the time allowed for meals did not violate the detainees' constitutional rights.

The court held that restrictions placed on use of the day room, limiting administrative segregation detainees' use of the room to one or two inmates at a time, were reasonably related to institutional security concerns. (Orange County Jail System, California)

U.S. Appeals Court
ALIENS

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 the 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. Appeals Court
SANITATION
VENTILATION
TEMPERATURE
ODORS

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

U.S. District Court
ADA-Americans with
Disabilities Act
SAFETY
SHOWERS

Shaw v. TDCJ-CID, 540 F.Supp.2d 834 (S.D.Tex. 2008). A legally blind state inmate brought an action alleging that prison officials failed to remedy unsafe conditions in handicapped showers, in violation of his constitutional rights, Title II of Americans with Disabilities Act (ADA), the Rehabilitation Act (RA), and the Texas Tort Claims Act (TTCA). The inmate also alleged that prison medical officials were deliberately indifferent to his serious medical needs. The district court granted summary judgment for the officials. The court held that prison officials did not discriminate against the legally blind inmate as the result of their alleged failure to remedy unsafe conditions in the prison's handicapped showers, and thus the officials were not liable under Title II of Americans

with Disabilities Act (ADA) for injuries the inmate sustained in a slip and fall accident. (Estelle Unit, Texas Department of Criminal Justice-Correctional Institutions Division)

U.S. District Court
CONDITIONS
EMOTIONAL
DISTRESS
FOOD
HYGIENE
MEDICAL CARE
SANITATION

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

U.S. District Court
TEMPERATURE

Stutes v. Tipto, 540 F.Supp.2d 516 (D.Vt. 2008). A Vermont inmate incarcerated in Oklahoma in a privately-owned facility brought an action against Vermont prison officials and facility employees claiming cruel and unusual punishment. The inmate alleged that his time spent outdoors in cold weather exposed him to "the potential of hypothermia, frostbite, and cold-related infections such as influenza, ear infections, upper respiratory infections, bronchitis and more." Shortly after his exposure to the cold, he began suffering from flu-like symptoms. The district court dismissed the action. The court held that a state corrections commissioner was not subject to liability under § 1983 for alleged mistreatment of the inmate, even though the inmate sent a letter to the commissioner asking for protection from retaliation, and submitted a formal grievance form to the commissioner after the alleged mistreatment, where there was no indication that the commissioner was responsible for a policy or custom that led to the wrongdoing, or that he failed to properly supervise employees who committed the allegedly wrongful acts. (North Fork Correctional Facility, Oklahoma, Corrections Corporation of America)

U.S. Appeals Court
MATTRESS
SANITATION

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 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)

U.S. Appeals Court
CLOTHING

U.S. v. Reed, 522 F.3d 354 (D.C. Cir. 2008). A defendant was convicted in district court of armed bank robbery, armed carjacking and destruction of property and he appealed. The appeals court affirmed. The court held that requiring the defendant to wear a jumpsuit without underwear did not rise to the level of a coercive police activity that would render the defendant's confession not voluntary within the meaning of the due process clause of the Fourteenth Amendment. (District of Columbia)

U.S. District Court
DEATH PENALTY

Walker v. Epps, 587 F.Supp.2d 763 (N.D.Miss. 2008). Death row inmates brought a § 1983 action against prison officials, challenging the constitutionality of a state's lethal injection protocol, and seeking a preliminary injunction to prevent the state from executing them by lethal injection during the pendency of their action. The state moved for summary judgment. The district court granted the motion. The court held that the three-year statute of limitations on the inmates' § 1983 action accrued on the later date of when their individual cases became final on direct review or on the effective date of the state's adoption of lethal injection as a means of execution, which was the date when each inmate knew that, as a matter of right, any impediment to setting an execution date had been removed. (Mississippi Department of Corrections)

U.S. District Court
LIGHTING

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

U.S. District Court
BEDDING
MATTRESS
SANITATION
TOILETS

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

door, the denial of his preferred cleaning materials when other suitable materials were made available to him, or a single two-week period during which the plaintiff's cell was not cleaned. The court noted that the prisoner's complaints related principally to his personal preferences as to the cleanliness of his cell. Prison officials did not display deliberate indifference to the prisoner's complaints, but instead responded quickly and appropriately, in that the prisoner received a new mattress within two days of his request, and he was moved to a new cell without a plexiglass cover within five days of his complaint. (Southport Correctional Facility, New York)

U.S. District Court
SMOKE

Williams v. District of Columbia, 530 F.Supp.2d 119 (D.D.C. 2008). A former inmate brought a § 1983 action against District of Columbia and corrections officials seeking damages related to his alleged exposure to second-hand smoke while he was in jail. Defendants moved for summary judgment. The court granted summary judgment for the defendants. The court held that a potential future injury to the former inmate arising from his alleged exposure to environmental tobacco smoke (ETS) while he was in jail was too remote and speculative to support standing in the inmate's § 1983 action. The court noted that the expert report submitted by the inmate indicating a increased risk of heart disease and lung cancer for the jail population exposed to ETS during the inmate's period of incarceration did not indicate a probability of harm to the inmate. (District of Columbia Department of Corrections Central Detention Facility)

2009

U.S. District Court
SMOKE

Abuhouran v. U.S., 595 F.Supp.2d 588 (E.D.Pa. 2009). A prisoner brought a negligence action against the United States under the Federal Tort Claims Act alleging prison officials exposed him to excessive amounts of environmental tobacco smoke (ETS). The defendants moved for summary judgment and the district court granted the motion. The court held that the prisoner was precluded, under the discretionary function exception of the Federal Tort Claims Act (FTCA), from challenging the warden's designation of smoking areas, as federal regulations explicitly assigned the exercise of choice or judgment to the warden to designate areas subject to ETS. The court noted that the stated policy considerations for implementing the "no smoking areas" in prisons was to provide a clean air environment and to protect the health and safety of staff and inmates, suggesting the designation of smoking areas was the kind of discretionary function the FTCA exception was meant to shield. The court held that under Pennsylvania law, the prisoner failed to present any medical evidence or expert witnesses to establish a causal connection between his exposure to environmental tobacco smoke (ETS) and his alleged injury, as required to prevail on his negligence claim. The court also held that the prisoner failed to present any evidence of an actual injury. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court
MEDICAL CARE
SMOKE

Adams v. Banks, 663 F.Supp.2d 485 (S.D.Miss. 2009). An inmate brought a § 1983 action against a warden and other prison officials for exposure to unreasonable levels of secondhand smoke, or environmental tobacco smoke (ETS), and for denial of adequate medical care. The defendants moved for summary judgment, and the inmate moved for summary judgment on his claim against a prison nurse. The district court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate was exposed to unreasonably high levels of environmental tobacco smoke (ETS) from cellmates who smoked in his cell and from other inmates in the area outside his cell. The court also found fact issues as to whether the complaints made by the inmate were sufficient for the warden and assistant supervisor to infer that ETS posed a substantial risk of serious harm to him, such that they acted with deliberate indifference to the inmate's situation. The court found that summary judgment was precluded by genuine issues of material fact as to the seriousness of the inmate's medical condition as a result of exposure to environmental tobacco smoke (ETS) in his cell, as well as to the nature of a prison nurse's responses to the inmate's three sick call request forms complaining of coughing, chest pains, nausea, dizziness, difficulty breathing and vomiting as a result of exposure to ETS. The court held that neither the warden nor the assistant supervisor were involved in a decision to deny the inmate medical care as a result of exposure to secondhand smoke, and thus they were not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. (Wilkinson County Corr'l. Facility, Mississippi)

U.S. Supreme Court
PRETRIAL DETAINEES
OUT OF CELL TIME
ISOLATION

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." (Federal Bureau of Prisons, Metropolitan Detention Center, Brooklyn, New York)

U.S. District Court
EMOTIONAL
DISTRESS
MEDICAL CARE

Baker v. Wilkinson, 635 F.Supp.2d 514 (W.D.La. 2009). A Louisiana state prisoner brought a § 1983 action, in forma pauperis, against a warden, assistant warden, prison operator, and two nurses, alleging that he was denied adequate medical care related to hemorrhoids. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner suffered an injury as a result of the delay in appropriate medical care, whether he was entitled to damages for emotional distress, and whether he was entitled to nominal or punitive damages. (Winn Correctional Center, Louisiana, Corrections Corporation of America)

U.S. District Court
CLOTHING
MATTRESS
RESTRAINTS
SEGREGATION
TEMPERATURE

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

U.S. District Court
CROWDING
FAILURE TO PROVIDE
CARE
MEDICAL CARE

Coleman v. Schwarzenegger, 922 F.Supp.2d 882 (E.D.Cal. 2009). State prisoners brought class actions against a governor and other officials, alleging unconstitutional conditions of confinement as to the provision of medical and mental health care. After granting a correctional officer association's motion to intervene as a plaintiff, the motion to convene a three-judge panel was granted, to consider plaintiffs' request for order to reduce prison population. The court held that clear and convincing evidence established that overcrowding was the primary cause of the provision of inadequate medical and mental health care; (2) deficiencies in the provision of medical and mental health care could not be resolved in the absence of a prisoner release order; (3) reduction in the California state prison population to a system-wide cap was warranted; (4) the court's order was the least intrusive means necessary to correct the violations, as required by PLRA; and (5) reduction in the California state prison population to a system-wide cap of 137.5% was warranted. (California Department of Rehabilitation and Corrections)

U.S. District Court
HYGIENE
SEGREGATION
USE OF FORCE

Cusamano v. Sobek, 604 F.Supp.2d 416 (N.D.N.Y. 2009). A former state prisoner brought a pro se action against department of corrections employees, alleging violation of his First, Eighth and Fourteenth Amendment rights as well as the New York Constitution. The district court granted summary judgment for the defendants in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact regarding whether a corrections officer was present during, and participated in, the alleged assault of the prisoner. The court noted that an officer's failure to intervene during another officer's use of excessive force can itself constitute excessive force. The court also held that summary judgment was precluded by a genuine issue of material fact regarding whether excessive force was used against the prisoner. The court held that the denial of access to toilet paper and soap during the prisoner's confinement in a special housing unit did not constitute an unconstitutional condition of confinement, as required for the prisoner's inadequate prison conditions claim against corrections officers under the Eighth Amendment. The court noted that the deprivation of toilet paper and soap was not continuous, there was no evidence that the prisoner was deprived of any other toiletry items, and there was no evidence that the prisoner requested toilet paper during medical visits. The court found that the actions of the corrections officers toward the prisoner, including the utterance of profanities and the deprivation of amenities, did not cause the prisoner physical injury or psychological injury that was more than de minimis, as required for the prisoner's harassment claim against the corrections officers under the Eighth Amendment. 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
TEMPERATURE

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 establish that alleged excessively cold temperature in his cell for a period of approximately three weeks was sufficiently serious to deprive him of the minimal civilized measures of life's necessities, as would support his Eighth Amendment prison conditions claim. Although the prisoner and other inmates in his cell block had to bundle up to try to stay warm, and the prisoner contracted a case of common cold, there was no concrete, objectively verifiable evidence that demonstrated the degree of cold in the cell during the relevant time period. The court found that prison employees were not deliberately indifferent to the prisoner's complaints regarding cold temperature in his cell during a three-week period, as would support the prisoner's Eighth Amendment prison conditions claim. The court noted that the prisoner testified that he had winter clothing and a blanket and that he used them, employees made efforts to address the prisoner's complaints regarding the situation by submitting work orders for a heating system, and there was no evidence that the employees had authority to do anything else. The court found that the prisoner failed to establish that his prior lawsuit against prison officials and/or his filing of grievances was the "motivating 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 grievances, as would support his § 1983 retaliation claim against the employees. (Menard Correctional Center, Illinois)

U.S. District Court
ALIENS

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
CLOTHING
FOOD
RESTRAINTS
TEMPERATURE

Gay v. Chandra, 652 F.Supp.2d 959 (S.D.Ill. 2009). A state prisoner, who suffered from antisocial and narcissistic personality disorders, brought a § 1983 action against a psychiatrist who treated him in prison, alleging that conditions of confinement to which the psychiatrist subjected him violated the Eighth Amendment. The district court granted summary judgment in favor of the psychiatrist in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the cell where the prisoner was restrained naked was excessively cold, and as to whether the psychiatrist knew that the prisoner would in fact be restrained naked in excessively low temperatures. Similarly, the court found fact issues as to whether the psychiatrist's decision not to allow the prisoner to wear any clothing while he was restrained denied the prisoner a "civilized measure" of life's necessities, and as to whether the psychiatrist was deliberately indifferent to the fact that the prisoner was restrained without clothes. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the psychiatrist's denial of food to the prisoner while the prisoner was restrained for 32 hours constituted an Eighth Amendment violation. The court found that the decision of the psychiatrist to use therapeutic restraints on the prisoner did not, in and of itself, violate the Eighth Amendment; where the psychiatrist's decision to restrain the prisoner was to protect the prisoner from harming himself. The court found that the psychiatrist was not entitled to qualified immunity in the prisoner's § 1983 action alleging Eighth Amendment violations arising from his medical treatment; where a fact issue existed as to whether the psychiatrist violated the prisoner's Eighth Amendment rights, and the prisoner's right to receive medical treatment for his serious medical needs, and his right not to be punished through conditions of his confinement, was a clearly established right. (Tamms Correctional Center, Illinois)

U.S. District Court
CAPACITY
CLOTHING
CONDITIONS
CROWDING
HYGIENE
NATURAL LIGHT
NOISE
RESTRAINTS
SAFETY
SANITATION
STAFFING
TEMPERATURE

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. 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
CONDITIONS
EMOTIONAL
DISTRESS
EXERCISE
ISOLATION
SHOWERS

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

U.S. Appeals Court
BEDS
MEDICAL CARE

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. District Court
CONDITIONS
MEDICAL CARE
STATE REQUIRE-
MENTS

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. (Indiana Dept. of Correction)

U.S. District Court
ASBESTOS
SMOKE
WORK

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

U.S. District Court
FAILURE TO PROVIDE
CARE
MEDICAL CARE
SEGREGATION
SHOWERS

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, Penn., and PrimeCare Medical, Inc.)

U.S. Appeals Court
DISCIPLINE
SEGREGATION

Marion v. Columbia Correction Inst., 559 F.3d 693 (7th Cir. 2009). A prisoner brought a § 1983 action against prison officials alleging he was denied equal protection and due process at a disciplinary hearing which resulted in 240 days of disciplinary segregation. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded. The court held that the issue of whether 240 days in disciplinary segregation was the type of atypical, significant hardship that would implicate a protected liberty interest could not be decided at the pleading stage. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
CLOTHING
TEMPERATURE

Mays v. Springborn, 575 F.3d 643 (7th Cir. 2009). A prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleged retaliation for his complaints about the searches, denial of his request for dietary supplements which he considered to be religious necessities, alleged inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district

court granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated in part, and remanded. According to the court, any failure to issue winter clothing items, including winter underwear, boots, galoshes, sweater, gloves, scarves, or wool socks, did not rise to the level of an objectively serious harm necessary to show an Eighth Amendment violation, absent a showing that the prisoner was forced to be in the cold for long periods of time or that he suffered anything more than the usual discomforts of winter. (Stateville Corr'l. Center, Illinois)

U.S. District Court
ADA- Americans with
Disabilities Act
HANDICAPPED
INMATES
MEDICAL CARE
PRETRIAL DETAINEES
PROGRAMS
SHOWERS
TOILETS

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. According to the court, the county and county sheriff failed to establish that they were not recipients of federal funds, as would render them beyond the reach of the Rehabilitation Act's requirements. The court held that county prison facilities to which the paraplegic and partially-paralyzed pretrial detainees claimed to have been denied access--showers, toilets, and sinks--were “services” and “programs” within the meaning of Title II of ADA, which forbade discrimination against persons with disabilities in the area of public services, programs, and activities. The court found that summary judgment was precluded by genuine issues of material fact as to whether the paraplegic and partially-paralyzed pretrial detainees were intentionally discriminated against, and as to whether modifications to county prison facilities requested by the detainees were reasonable. The court found no evidence that the detainees were excluded from electronic monitoring or drug rehabilitation programs by the county department of corrections, as would support their Americans with Disabilities Act (ADA) claim. (Cook County Department of Corrections, Illinois)

U.S. District Court
CELLS
TRANSFERS

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

U.S. District Court
ADA- Americans with
Disabilities Act
FOOD
SAFETY
TOILETS
VISITATION

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. (New York State Department of Correctional Services, Green Haven Correctional Facility)

U.S. Appeals Court
MEDICAL CARE

Shepherd v. Dallas County, 591 F.3d 445 (5th Cir. 2009). A pretrial detainee sued a county under § 1983, alleging that conditions of confinement, specifically the jail's failure to administer pills he needed to ameliorate chronic hypertension, violated his due process right to medical care while in custody. The district court, entered judgment on jury verdict for the detainee. The county appealed. The appeals court affirmed, finding that the action was an attack on conditions of confinement rather than on episodic acts or omissions of particular jail officials. The court noted that the jail medical director testified that the jail's medical services were inadequate, and a clinical pharmacist testified that the administration of medication at the jail was so inadequate that half or more of the inmates did not receive their prescription medications. The court held that a Department of Justice (DOJ) report concerning jail conditions was not excludable as being more prejudicial than probative, inasmuch as the report was relevant in that it provided strong support for the claim that medical care at the jail was constitutionally inadequate, and, although findings in the report were prejudicial to the county's cause, they were probative as well. (Dallas County Jail, Texas)

U.S. District Court
CELLS
MATTRESS
RESTRAINTS
SHOWERS
USE OF FORCE

Zimmerman v. Schaeffer, 654 F.Supp.2d 226 (M.D.Pa. 2009). Current and former inmates at a county jail brought a § 1983 action against the county, corrections officers, and prison officials, alleging that they were abused by officials during their incarceration in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether corrections officers and prison officials knew or should have known that an officer would apply excessive force to the inmate by shocking him when he was restrained and whether they could have prevented the officer's excessive use of force; (2) whether the inmates exhausted administrative remedies by filing grievances regarding use of a restraint chair, lack of mattresses, inability to shower, cell conditions, and issues with mail; (3) whether the use of mechanical restraints against the inmates constituted wanton infliction of pain in violation of the Eighth Amendment; (4) whether an inmate complied with officials when extracted from a cell, rendering the use of oleoresin capsicum spray excessive and unjustified; (5) whether cell conditions posed a substantial risk of harm to inmates and whether corrections officers and prison officials were deliberately indifferent to that risk; and (6) whether the warden of the county jail was aware of and condoned the use of excessive force against inmates at jail. (Mifflin County Correctional Facility, Lewistown, Pennsylvania)

2010

U.S. District Court
CONDITIONS OF
CONFINEMENT
TRANSFER

Advocacy Center for Elderly and Disabled v. Louisiana Dept. of Health and Hospitals, 731 F.Supp.2d 603 (E.D.La. 2010). A disability advocacy organization brought an action challenging the Louisiana Department of Health and Hospitals' practice of subjecting incompetent criminal defendants to extended delays in parish jails before their transfer to a mental health facility. The organization moved for a preliminary injunction. The district court granted the motion in part and denied in part. The court held that the organization demonstrated a substantial likelihood of success on the merits of its due process claim, and demonstrated a substantial threat of irreparable injury if the injunction did not issue. The court found that the organization demonstrated that the threatened injury outweighed the damage the injunction might cause, and the organization demonstrated that the public interest would not be disserved if an injunction was issued. The organization claimed that the Louisiana Department of Health and Hospitals' practice of subjecting criminal defendants found to be incompetent to stand trial to extended delays in parish jails before their transfer to a mental health facility was not rationally related to the restoration of the defendants' competency, in violation of their due process rights, where incompetent defendants remained in parish jails because mental health facility was full, not because remaining in jail might restore their competency. The court noted that the organization presented evidence that continued incarceration in parish jails could exacerbate the incompetent defendants' mental conditions. The court held that inadequate funding could not excuse the Department's perpetuation of unconstitutional conditions of confinement. (Louisiana Department of Health and Hospitals, Feliciana Forensic Facility)

U.S. District Court
HYGIENE
SANITATION
OUT OF CELL TIME

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. The court held that the prisoner's allegations were sufficient to state a colorable § 1983 claim that he was deprived of personal hygienic items and sanitary conditions in violation of the Eighth Amendment, where the prisoner alleged he was regularly deprived of toilet paper and soap, that he was only allowed to shower twice a week, that he was made to strip in dirty showers full of filth and insects, that the unit in which he resided was littered with food and urine and contained open sewers, and that he suffered illness as a result. The court found that

the prisoner's allegations that he was subjected to a policy of a minimum of five hours of outside exercise per week but that administrative regulations provided for a minimum of seven hours and controlling consent decrees required eight hours, were sufficient to state a colorable § 1983 claim under the Eighth Amendment.

The court ruled that the prisoner's allegations were sufficient to state a § 1983 claim for violations of the Eighth Amendment prohibition against cruel and unusual punishment where the prisoner alleged that he was locked down for 23 and 24 hours in a cell with a steel door, that prison officials disconnected the intake vent that pulled dust and allergens from the cell, that the prison heating system was not on in the winter, and that as a result of these conditions, he suffered cracked lips and nostrils which bled and refused to heal, as well as difficulty breathing and sleeping. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim for violations of his Fourth Amendment right to be free of unlawful searches and Eighth Amendment right to be free of cruel and unusual punishment. The prisoner alleged that whenever he was moved from his cell to any other location he was made to stand in a brightly lit shower in full view of female employees, made to strip naked, place his bare feet on a filthy floor covered in insects and scum, spread his buttocks, lift his penis, then put his fingers in his mouth without any opportunity to wash his hands, and that the process was unnecessary because inmates were in full restraints, escorted and solitary at all times. The court found that the prisoner's allegations were sufficient to state a colorable § 1983 Eighth Amendment claim for violation of his right to be free of cruel and unusual punishment where the prisoner alleged the exercise provided to him was to stand in a completely enclosed cage alone, in extreme heat or cold without water, shade, exercise equipment or urinals, and that as a result he suffered sunburns, cracked and bleeding lips and a lack of desire to exercise, resulting in a loss of physical and mental health. (High Desert State Prison, Nevada)

U.S. Appeals Court
ADA-Americans with
Disabilities Act
EQUAL PROTECTION
STATE REQUIREMENT

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. District Court
TEMPERATURE
VENTILATION

Blackmon v. Kuuia, 758 F.Supp.2d 398 (S.D.Tex. 2010). A state prisoner brought a civil rights action against prison officials, alleging his exposure to excessive heat violated his Eighth Amendment rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether conditions during the state prisoner's incarceration in a prison unit, which included frequent temperatures into the 100's and insufficient ventilation, and which allegedly had a negative effect on the prisoner's personal health, constituted a denial of the minimal civilized measure of life's necessities. The court held that a prison maintenance supervisor did not act with deliberate indifference to the state prisoner's health or safety in responding to the prisoner's grievance about excessive heat, as required to support an Eighth Amendment claim, where he investigated the prisoner's complaint and gave an appropriate response. According to the court, the state prisoner's right not to be subjected to excessive heat was clearly established at the time he was continually exposed to temperatures into the 90s and 100s, in determining whether prison officials who failed to respond to his complaints about the heat were entitled to qualified immunity in his civil rights action. (Garza East Unit, Beeville, Texas Department of Criminal Justice)

U.S. District Court
MEDICAL CARE
RESTRAINTS
TEMPERATURE
USE OF FORCE

Caldwell v. Luzerne County Corrections Facility Management Employees, 732 F.Supp.2d 458 (M.D.Pa. 2010). A county prison inmate brought civil rights claims against prison officials. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated claims of excessive force against prison officials with respect to various incidents in which he was allegedly tased, causing him to hit his forehead on a cell wall, forced to remain on a hard mattress at an uncomfortable angle, causing severe neck pain, strip searched, placed in 5-point restraints, causing swollen and bleeding wrists, pulled forcefully while handcuffed, causing his hands to swell and bleed, punched and slapped in the back while handcuffed, maced, and slammed onto the floor, kicked and punched. The court held that the inmate's allegations that in four incidents occurring over a span of four months he was placed on a mattress at an awkward angle for over 12 hours and subjected to severe pain, not permitted to use the bathroom, eat, drink, or shower while placed in 5-point restraints for many hours, and was refused a blanket while restrained in a cell with broken windows and an air vent blowing directly on him, were sufficient to state a conditions of confinement claim under the Eighth Amendment. The court held that the inmate's allegations that he was subjected by prison officials to excessive force and unconstitutional

conditions of confinement, and that the officials' conduct reflected retaliation for his filing of lawsuits against them, stated a claim for retaliation under § 1983. (Luzerne County Corrections Facility, Pennsylvania)

U.S. District Court
EMOTIONAL
DISTRESS
JUVENILES

Clark v. Conahan, 737 F.Supp.2d 239 (M.D.Pa. 2010). A juvenile and his parents brought an action against juvenile court judges, a private attorney, juvenile probation staff, the owner of construction company, property owners, and others. They alleged that, in connection with a scheme to divert juvenile offenders to newly constructed privately-owned juvenile detention facilities in return for kickbacks, the defendants violated the juvenile's constitutional rights. The plaintiffs also alleged that the defendants engaged in a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy, and alleged false imprisonment and intentional infliction of emotional distress (IIED). The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the judge was not entitled to immunity for his alleged non-judicial conduct and was not entitled to legislative immunity for budgetary actions he took in his role as president judge. The court held that the juvenile lacked standing to assert a Racketeer Influenced and Corrupt Organizations Act (RICO) action against the defendants because the juvenile asserted that he suffered great emotional distress and loss of earning capacity based on the education that he missed while in custodial detention, which did not demonstrate any concrete monetary loss. (Pennsylvania)

U.S. District Court
EMOTIONAL
DISTRESS
HARASSMENT
THREATS
USE OF FORCE

Cummings v. Harrison, 695 F.Supp.2d 1263 (N.D.Fla. 2010). A Black Muslim state prisoner brought a civil rights action against a prison warden and correctional officers, alleging, among other things, that the defendants used excessive force against him in violation of the Eighth Amendment and retaliated against him, in violation of First Amendment, for submitting grievances. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether correctional officers' repeated verbal threats, including death threats, combined with physical assaults, against the Black Muslim prisoner caused the prisoner extreme psychological harm, and as to whether the officers maliciously and sadistically used force against the prisoner because he was black or because he practiced the Muslim faith. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the prison warden had the ability to remove the Black Muslim prisoner from the supervision of the correctional officer who was allegedly verbally and physically abusing him, but refused to do so, and denied the prisoner's request for protective custody. (Taylor Correctional Institution, Florida)

U.S. Appeals Court
TEMPERATURE

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
CLOTHING
RESTRAINTS

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

U.S. Appeals Court
EMOTIONAL
DISTRESS
MEDICAL CARE
PRETRIAL DETAINEES

Harriman v. Hancock County, 627 F.3d 22 (1st Cir. 2010). An arrestee brought an action against a county, sheriff, and corrections officers alleging excessive force, false arrest, conspiracy, deprivation of due process, negligence, and intentional infliction of emotional distress. The district court granted the defendants' motion for summary judgment and the arrestee appealed. The appeals court affirmed. The court held that in the detainee's excessive force claim the detainee's assertion that officers' accounts of his fall in his jail cell were inconsistent and inherently unbelievable was insufficient to defeat the defendants' motion for summary judgment. The court noted that the detainee conceded he had no recollection of an alleged beating, the officers were consistent in reporting that they saw the detainee fall and heard sounds in his cell that resembled a fall, all officers reported that they did not strike the detainee and did not see anyone strike the detainee, and a neurologist did not opine on the cause of the detainee's injuries. (Hancock County Jail, Maine)

U.S. Appeals Court
ADA- Americans with
Disabilities Act
SEGREGATION
USE OF FORCE

Johnston v. Maha, 606 F.3d 39 (2nd Cir. 2010). An inmate brought a § 1983 action against employees of a county jail, alleging violations of his constitutional rights and of the Americans with Disabilities Act (ADA) in connection with detention and medical care while in jail. The district court granted the defendants summary judgment. The inmate petitioned for the appointment of counsel in his appeal. The appeals court granted the petition. The court held that the appointment of counsel was appropriate in connection with the inmate's appeal from dismissal of his claim that his placement in solitary confinement, and subsequent excessive force he suffered, violated his

constitutional rights, since there was likely merit in the inmate's claims. The court found that it appeared from the inmate's complaint that he might have been a pretrial detainee at the time he was placed in solitary confinement, and thus the claim that the inmate was subjected to excessive force as a detainee would arise under the Fifth, not the Eighth Amendment, because as a detainee he could not be punished at all. The court noted that there was no evidence that the inmate violated any rule or was provided with a pre-deprivation hearing. According to the court, the legal issues were fairly complex, especially with respect to whether the inmate's pretrial detention was substantial enough to give rise to a constitutional violation of a procedural due process right. (Genesee County Jail, New York)

U.S. District Court
DOUBLE CELLING
PLUMBING
SANITATION
VENTILATION

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

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
PRETRIAL DETAINEES
TRANSFERS

Nelson v. Shuffman, 603 F.3d 439 (8th Cir. 2010). A pretrial detainee resident of the Missouri Sexual Offender Treatment Center brought a § 1983 action against 13 treatment center officials, alleging violations of his constitutional rights. The district court granted summary judgment in favor of six of the 13 defendants. The remaining seven defendants appealed. The appeals court affirmed. The appeals court held that summary judgment was precluded by genuine issues of material fact as follows: (1) as to whether the officials recklessly disregarded an objectively serious risk of harm to the pretrial detainee resident by placing him with a roommate who had a history of sexually assaulting vulnerable young males; (2) as to whether the pretrial detainee had a serious medical need and whether a treatment center official deliberately disregarded the need by failing to provide the psychological treatment she prescribed; (3) as to whether officials retaliated against the detainee resident for filing an abuse and neglect charge and several grievances complaining about treatment center officials' failure to provide him necessary psychological treatment; and (4) as to whether officials' transfer of the detainee resident to an unfinished ward that only housed one resident who was confined to shackles twenty-four hours a day was punitive and violated due process by imposing a punishment that had no legitimate institutional objective. (Missouri Sexual Offender Treatment Center)

U.S. Appeals Court
MEDICAL CARE
SEGREGATION

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
FACILITIES
SAFETY
SHOWERS

Quarles v. Palakovich, 736 F.Supp.2d 941 (M.D.Pa. 2010). An inmate, whose head and back had allegedly been injured when a portion of drywall ceiling in a prison shower collapsed onto him, filed a pro se § 1983 action against prison officials alleging deliberate indifference to his safety, in violation of the Eighth Amendment. All parties moved for summary judgment. The district court granted the defendants' 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 prison's unit manager or correctional officers had subjective knowledge of the dangerous condition of the ceiling in the inmates' shower facilities. (State Correctional Institution at Smithfield, Pennsylvania)

U.S. District Court
CELLS
FOOD
PRETRIAL DETAINEE
SANITATION
TOILETS

Robinson v. Danberg, 729 F.Supp.2d 666 (D.Del. 2010). An inmate brought a § 1983 action against 47 defendants, including various prison officials, alleging various claims arising from acts occurring while he was a pretrial detainee and sentenced inmate. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that a sergeant and a corporal sergeant "set up" the pretrial detainee in connection with a hearing on a razor incident, and that the detainee was told during a disciplinary hearing that the sergeant and corporal sergeant were going to make the detainee's life miserable, were sufficient for the detainee to state a due process claim. The court also held that a retaliation claim was stated by allegations that the state prisoner received false charges, write-ups and accusations from prison officials, was placed in "the hole" or in isolation on numerous occasions, received numerous threats, was denied food and had foreign objects placed in his food. The inmate alleged that these actions were all in retaliation for exercising his right to file grievances, his

statements about suing people, and making those on the outside aware of the prison conditions. The court held that these allegations, when construed liberally, set forth a chronology of events from which retaliation could be inferred. According to the court, allegations that the pretrial detainee was denied dinner on several occasions, the toilet in his cell flooded and he was left in his cell for over seven hours, all of the detainee's uneaten food was shaken on the cell floor while prison staff was collecting food trays, the detainee was placed in a cell with blood everywhere and nothing to be protected from exposure, he was intentionally awoken from sleep, was denied recreation, and was not given supplies to clean urine thrown under his cell door, were sufficient for the detainee to state a claim that his conditions of confinement were in violation of the due process clause of Fourteenth Amendment. (James T. Vaughn Correctional Center, Smyrna, Delaware)

U.S. District Court
LIGHTING
SEGREGATION
TRANSFER

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
EMOTIONAL
DISTRESS
MEDICAL CARE

Tate v. Troutman, 683 F.Supp.2d 897 (E.D.Wis. 2010). A county jail inmate filed a § 1983 action alleging that officials failed to provide constitutionally sufficient medical care. The inmate moved for the entry of a default judgment. The district court granted the motion in part and denied in part. The court held that a county jail officer and medical officials were not personally involved in the allegedly inadequate medical treatment provided to the inmate after a fall in his cell, and thus were not liable under § 1983 for any compensatory or nominal damages for an Eighth Amendment violation. The court noted that even though the inmate suffered pain after the fall and had blood in his bowel movements, the inmate had a history of severe low back and bilateral neck pain, headaches, and rectal bleeding before the fall. The court held that county jail officials failed to provide adequate medical care for the inmate's dislocated shoulder, in violation of the Eighth Amendment, and thus the inmate was entitled to an award of compensatory damages for past pain and suffering. The court noted that the jail physician refused to see the inmate or speak to him, jail officials rejected the inmate's grievances regarding his inadequate medical treatment, and the inmate experienced physical pain and emotional distress for three or four weeks due to his lack of adequate diagnosis and treatment of his shoulder injury by immobilization. The court concluded that an award of \$27,000 was the appropriate amount to compensate the inmate for his past pain and suffering, where the inmate experienced pain and suffering for about one month. The court found that county jail officials showed callous indifference towards the inmate's medical needs, and thus a punitive damages award of \$9,000 was warranted to deter or punish the Eighth Amendment violation. The court also found that the inmate was entitled to prejudgment interest on the compensatory damage award at an average monthly prime rate compounded annually from the period beginning on the date of his injury through the date of the entry of judgment. (Milwaukee Country Jail, Wisconsin)

U.S. Appeals Court
EXERCISE
SEGREGATION

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

U.S. Appeals Court
LIGHTS

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
FOOD

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
CLOTHING
EQUAL PROTECTION
FOOD

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

2011

U.S. District Court
CELLS
CROWDING
USE OF FORCE

Bailey v. Hughes, 815 F.Supp.2d 1246 (M.D.Ala. 2011). A state prisoner brought an action against a county sheriff's department, a sheriff, corrections officers, and others, alleging unconstitutional deprivations of his rights while in custody in a county jail. The defendants moved to dismiss and for an award of attorney fees. The district court granted the motions. The district court held that: (1) neither the Fourteenth Amendment nor the Fourth Amendment's excessive force prohibition applied to the sentenced offender; (2) the sheriff and supervisory officials were entitled to qualified immunity; (3) allegations did not state an Eighth Amendment claim based on jail overcrowding; (4) the officers' alleged conduct in tasing the prisoner did not violate the Eighth Amendment; (5) allegations did not state a § 1983 claim for an unconstitutional strip search; (6) placement of the prisoner alone in closet-sized cell for eight hours after the alleged incident did not amount to unconstitutional confinement; and (7) the officers' alleged conduct in searching the prisoner's cell did not amount to retaliation for prisoner's prior lawsuit. The court noted that the prisoner admitted that he repeatedly refused the officers' verbal commands and fled his cell, he was repeatedly warned that he would be shocked if he did not comply with the officers' commands, and he was shocked by a taser only once before he fled his cell and then two to three times after he did so. (Houston County Jail, Alabama)

U.S. District Court
EMOTIONAL
DISTRESS
PROGRAMS

Banker v. County of Livingston, 782 F.Supp.2d 39 (W.D.N.Y. 2011). A female patient brought an action against a county and the company that provided court-ordered alcohol treatment and counseling services, alleging she was sexually abused by a counselor while undergoing treatment and counseling. The defendants moved to dismiss and the district court granted the motions. The court held that the plaintiff's allegation that she was required to make unescorted visits to a male area of the jail in order to receive alcohol abuse medication that was mandated as a condition of probation, did not state a claim of a constitutional magnitude as would give rise to the county's municipal liability under § 1983. According to the court, the county's alleged requirement that the plaintiff walk unescorted through portions of the male population jail to receive her medication was not so outrageous as could give rise to the county's liability for negligent infliction of emotional distress (NIED) under New York law, where nothing indicated that the plaintiff's physical safety was threatened. (Livingston County Council on Alcohol and Substance Abuse, Livingston County Jail, New York)

U.S. District Court
DOUBLE CELLING
CELL CAPACITY
CROWDING
MATTRESS
SAFETY

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 found that overcrowded conditions at the county jail, which required two inmates to share a cell designed for one and required inmates to eat meals in their cells, did not amount to cruel and unusual punishment, in violation of the pretrial detainee's due process rights and an inmate's Eighth Amendment rights, absent a showing that conditions of confinement deprived them of the minimal civilized measure of life's necessities, or subjected them to a health risk. The inmates claimed that one inmate was required to sleep on a mattress on the floor cell, which allegedly adds clutter to the floor and increases the risk of injury. The inmates alleged that the jail has more inmates than the day rooms can accommodate at meal time, and inmates are therefore required to eat meals in their cells. (Cuyahoga County Jail, Ohio)

U.S. District Court
SMOKE

Davidson v. Desai, 817 F.Supp.2d 166 (W.D.N.Y. 2011). An inmate at a state prison filed a pro se § 1983 action against prison officials and medical staff alleging that they had been deliberately indifferent to his serious medical needs, and had interfered with his attempts to file grievances regarding his medical care, in violation of the First, Eighth, and Fourteenth Amendments. The defendants moved alternatively for judgment on the pleadings and for

summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the state inmate's shoulder surgery, related to his degenerative disc disease, was delayed because of the inmate's refusal to submit to a pre-operative chest x-ray, or whether it was delayed due to the prison's deliberate indifference to his serious medical needs. The court also found that the inmate's breathing difficulties and possible asthma did not constitute "sufficiently serious conditions" under the Eighth Amendment, and thus prison officials' failure to house the inmate in a prison infirmary where levels of allergens were allegedly lower than levels in other parts of prison was not deliberate indifference. The court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate suffered serious health problems caused by exposure to environmental tobacco smoke (ETS), and whether officials knew of, yet disregarded an excessive risk to the inmate's health. (Elmira Correctional Facility, New York)

U.S. District Court
EMOTIONAL
DISTRESS
HARASSMENT

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
MEDICAL CARE
SANITATION

Hale v. Rao, 768 F.Supp.2d 367 (N.D.N.Y. 2011). An inmate brought an action against prison officials alleging deliberate indifference to his serious medical needs, and alleging that the conditions of his confinement violated the Eighth Amendment. Prison officials moved for summary judgment. The district court granted the motion in part and denied in part. The court excused the state inmate's failure to exhaust administrative remedies prior to bringing the claim in federal court because prison staff had thrown out a grievance filled out by another inmate on the inmate's behalf, refused to provide the inmate with the materials needed to file another grievance, and threatened to physically assault him if he attempted to utilize the grievance procedure. The court noted that the inmate was illiterate and had a poor understanding of the grievance procedure. The court held that the inmate was adequately treated following an alleged assault by a corrections officer, precluding the inmate's claim under the Eighth Amendment alleging deliberate indifference to his serious medical needs. The inmate received medical treatment including at least ten stitches to close the open wounds on his left shin, and an x-ray of his leg to determine if the bone was fractured. Medical staff later re-evaluated his leg injury, cleaned the wound, and provided pain killers. The court found that allegations by the inmate that prison conditions were unsanitary due to the presence of insects in an infirmary room, and that medical staff pulled a staple out of his abdomen by hand, failed to establish the inmate's claim under the Eighth Amendment that his conditions of confinement constituted cruel and unusual punishment, absent evidence that the conditions at the prison prevented the inmate from receiving appropriate medical care. (Downstate Correctional Facility, New York)

U.S. District Court
CLOTHING
EMOTIONAL
DISTRESS
EXERCISE
LIGHTING
MEDICAL CARE
SANITATION
SEGREGATION

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
CLASSIFICATION

Murray v. Bledsoe, 650 F.3d 246 (3rd Cir. 2011). An inmate brought a pro se petition for judicial review of a decision of the Federal Bureau of Prisons (BOP) rejecting his claim that he had a right to choose his cellmate. The district court denied relief, and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate had no Ninth Amendment right to choose his cellmate. (Special Management Unit, United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
HANDICAPPED
INMATES
ADA-Americans with
Disabilities Act
FACILITIES
PROGRAMS
SHOWERS
TOILETS

Pierce v. County of Orange, 761 F.Supp.2d 915 (C.D.Cal. 2011). 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, the court held that: (1) a sub-class was properly defined as mobility-impaired and dexterity-impaired pretrial detainees; (2) the detainees were subject to physical barriers to accessibility of jail facilities, in violation of ADA; (3) certain categories of programs, services, and activities were not similarly available to the detainees, in violation of ADA; (4) the county failed to establish that accommodations requested by the detainees would require fundamental alteration or produce an undue burden, or that current conditions were reasonably related to the facilities' legitimate interests; (5) the county's revised grievance procedure satisfied ADA; and (6) the least intrusive means to compel the county to remedy physical barriers and disparate provision of programs, services, and activities to detainees was to allow the county to draft a proposed plan. The court held that the widespread injunctive relief ordered by the district court, which addressed the county's failure to accommodate detainees with respect to toilets and showers, as well as programs, activities, and services, was narrowly drawn, extended no further than necessary to correct violations of the detainees' federal rights, and was the least intrusive means necessary to correct violation of those federal rights, as required by the Prison Litigation Reform Act (PLRA). (Orange County Jail System, California, including the Central Jail Complex, the Intake Release Center, the Men's Central Jail, the Women's Central Jail and the James A. Facility Musick and the Theo Lacy Facility)

U.S. District Court
ODOR
SANITATION

Rodriguez-Sanchez v. Acevedo-Vila, 763 F.Supp.2d 294 (D.Puerto Rico 2011). An inmate brought a § 1983 action against a prison warden and a director of corrections for alleged violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court held that the prison warden was liable for an Eighth Amendment violation but the inmate was not entitled to a judgment against the director of corrections. The court found that the inmate was entitled to \$1,000 per day for pain and suffering and to a punitive damages award of \$10,000 from the warden. According to the court, the warden was liable to the inmate for violating the inmate's Eighth Amendment right to be free from cruel and unusual punishment because the inhumane conditions to which the inmate was subjected in his cell included the lack of an adequate place to sit, no working toilet, shower runoff water channeled through the cell, and foul odors. The court held that these conditions were the result of design and not of accident or happenstance, and were known to the prison officials in charge and in control, including the warden. (Correctional Institution Annex 296, Guayama, Puerto Rico)

U.S. District Court
BEDDING
CLOTHING
ISOLATION
JUVENILES
LIGHTS
PROGRAMS
TEMPERATURE

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. District Court
CROWDING
MEDICAL CARE
SANITATION
USE OF FORCE

U.S. v. Cook County, Illinois, 761 F.Supp.2d 794 (N.D.Ill. 2011). The U.S. Department of Justice (DOJ) brought an action against a county, alleging conditions in a county jail violated the Eighth and Fourteenth Amendment. Following entry of a consent decree, the county moved for entry of a prisoner release order. The district court denied the motion. The court held that while overcrowding was a primary cause of the unconstitutional conditions at the jail and a prisoner release order was the least intrusive form of relief for overcrowding in the jail, the proposed prisoner release order was not narrowly drawn or sufficiently specific, and thus the grant of the order was not warranted. The court noted that conditions of overcrowding caused guards to resort to excessive force, incidents involving guards' use of excessive force were more frequent on days the jail was overcrowded, overcrowding caused

grossly unsanitary and unhealthy conditions, and chronic overcrowding of the jail's medical facilities resulted in inadequate medical and mental-health care. According to the court, the proposed order did not explain or justify the number of inmates who would be affected by the order or the number of inmates that would be released annually, did not specify which class or classes of prisoners would be eligible for release or what grounds were to be used in deciding whether an inmate should be released on their own recognizance or released on electronic monitoring, or provide assurance that adequate funding would be available for electronic monitoring equipment or that prisoners released to electronic monitoring would be effectively monitored. (Cook County Jail, Illinois)

2012

U.S. District Court
ADA- Americans with
Disabilities Act
STATE
REQUIREMENTS

Armstrong v. Brown, 857 F.Supp.2d 919 (N.D.Cal. 2012). Disabled state prisoners and parolees brought a class action against state prison officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. Seventeen years later, plaintiffs moved for an order requiring officials to track and accommodate the needs of class members housed in county jails and to provide a workable grievance procedure. Following remand to allow the development of additional evidence, the prisoners and parolees filed a renewed motion. The district court granted the motion and entered an enforce order. The court held that: (1) officials' efforts to comply with ADA, the Rehabilitation Act, and prior orders were inadequate and ineffective on a system-wide level; (2) system-wide injunctive relief was appropriate; (3) district court would not abstain from exercising its jurisdiction over matters pertaining to county jails; (4) a stay of the prior order was not warranted; and (5) the district court would exercise its retained jurisdiction to enforce the injunction. The court held that state officials were obliged to ensure ADA-compliant conditions for prisoners and parolees that they housed under their own authority in county jails. (California Youth and Adult Corrections Authority, Board of Prison Terms, Department of Corrections)

U.S. Appeals Court
SMOKE

Baker v. U.S., 670 F.3d 448 (3rd Cir. 2012). A prisoner, proceeding pro se, brought an action against the government and others under the Federal Tort Claims Act (FTCA), alleging personal injuries caused by his exposure to second-hand smoke while incarcerated. The district court granted the defendants' motion to dismiss and the government's motion to dismiss. The appeals court affirmed on other grounds. (McKean Federal Correctional Institution, Pennsylvania)

U.S. District Court
MATTRESS
MEDICAL CARE

Bell v. Luna, 856 F.Supp.2d 388 (D.Conn. 2012). A state inmate brought a § 1983 action against prison officials and a prison doctor, alleging that the defendants subjected him to unconstitutional conditions of confinement and showed deliberate indifference to his serious medical needs, in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the state prison doctor was not deliberately indifferent to the inmate's health in failing to take sufficient measures to treat the inmate's joint and back pain, or in failing to prescribe the inmate with an analgesic cream, as would violate the inmate's Eighth Amendment rights. The court found that forcing the inmate to go nearly seven months with a torn, partially unstuffed, unhygienic mattress was a condition of confinement sufficiently serious to implicate the Eighth Amendment. According to the court, the inmate's allegations that a unit manager "willfully, wantonly, and maliciously disregarded" the inmate's repeated requests for an adequate and hygienic mattress stated a claim under § 1983 against the manager for cruel and unusual punishment in violation of his Eighth Amendment rights. The court held that the unit manager was not entitled to qualified immunity from the inmate's § 1983 claim where the law of the Second Circuit would have put the manager on notice at the time of the alleged violation that failing to provide the inmate with an hygienic, working mattress for over half a year ran afoul of the Eighth Amendment. (MacDougall-Walker Correctional Institution, Connecticut)

U.S. District Court
EXERCISE
MEDICAL CARE
PROGRAMS
TRANSFER
WORK

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. (Cooper Street Correctional Facility, Residential Sex Offender Program (RSOP) at the Kalamazoo, and Probation Enhancement Program in Muskegon, Michigan)

U.S. District Court
FOOD
MEDICAL CARE
SHOWERS

Dilworth v. Goldberg, 914 F.Supp.2d 433 (S.D.N.Y. 2012). A released pretrial detainee and his wife brought an action against a county, its health care corporation, and 47 related individuals, for federal and state claims arising from his confinement at a county jail. The district court partially dismissed the claims and the plaintiffs moved to amend. The district court granted the motion in part and denied in part. The court found that New York's three-year limitations period began to run on the date in which the pretrial detainee was directed by an officer to sign fraudulent papers indicating he caused his own injuries and that would waive his legal claims against the county and jail officials. According to the court, it was appropriate for the now-released pretrial detainee to amend his complaint to assert his section 1983 unconstitutional conditions of confinement claim, under the Eighth Amendment, against the officer, since there were sufficient allegations in the proposed pleading to support the claim. The court noted that loss of consortium claims are not cognizable under § 1983 because they do not involve an injury based on a deprivation of the plaintiff's rights, privileges, and immunities. The detainee, an African-American, was detained in the jail when he slipped and fell on wet wax that had been left on a corridor floor by a trustee inmate. He "suffered severe injuries to his head, back, and right arm, and lost consciousness due to the

fall."He was taken the jail infirmary and given a " cursory " examination, which allegedly resulted in the understatement of his actual medical condition. Rather than allowing him to return to his cell to rest, he was ordered to go to a visit and he was threatened with a charge of disobeying a direct order if he did not comply. He suffered several subsequent health problems but was not taken to an outside source of medical care. He was given a wheelchair and assigned to a dormitory with inmates who had medical problems. While confined in the dorm he was allegedly denied meals on several occasions, was not able to take a shower, and was refused pain medication. He alleged further complaints about his treatment and conditions. (Westchester County Department of Corrections, New York Medical College, Westchester County Health Care Corporation, New York)

U.S. Appeals Court
CLOTHING
ISOLATION
RESTRAINTS

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

U.S. District Court
EMOTIONAL
DISTRESS
EQUAL PROTECTION

Harris v. Hammon, 914 F.Supp.2d 1026 (D.Minn. 2012). A prisoner brought a § 1983 action against a county and various officials with the state department of corrections (DOC), alleging violations of the Eighth and Fourteenth Amendments, as well as state law claims for false imprisonment, intentional infliction of emotional distress (IIED), and negligent infliction of emotional distress (NIED). The defendants moved for summary judgment and for judgment on the pleadings. The district court granted the motion in part and denied in part. The court held that there was no evidence of a continuing, widespread pattern of misconduct on account of county employees in not releasing prisoners pursuant to court orders, as required for the prisoner's § 1983 failure-to-train claims against the county for alleged violations of the Eighth and Fourteenth Amendments. The prisoner had been held for more than five days after a judge ordered his release pending his appeal. According to the court, the former prisoner's allegations were sufficient to plead that department of corrections (DOC) employees were deliberately indifferent to the prisoner's liberty rights under the Fourteenth Amendment, as required to state a § 1983 claim for violations of his due process rights based on his continued detention after a court ordered his release. The prisoner alleged that he had a court order for his release but he was returned to prison, that a judge faxed and mailed the release order to the prison after being contacted by the prisoner's attorney the next day, that the judge's clerk also telephoned employees to inform them that the prisoner was to be released, that one employee did not respond to calls from the prisoner's attorney, that another employee told the attorney he would have to hand deliver a certified copy of order by the end of her shift in three minutes so that the prisoner could be released before the weekend, and that employees told the attorney several days later that they might not be able to release the prisoner because the order could be invalid. The court also held that the prisoner's allegations were sufficient to plead that his continued detention, after his release was ordered by a judge, violated a clearly established right, as required to overcome qualified immunity for department of corrections (DOC) employees. (Lino Lakes Correctional Facility, Ramsey County Jail, Minnesota)

U.S. Appeals Court
CIVIL COMMITMENT
CONDITIONS
PROGRAMS

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. Appeals Court
ADA- Americans with
Disabilities Act
DINING
SHOWERS
TOILETS

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. District Court
DISCIPLINE
ISOLATION
PRETRIAL DETAINEES

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. District Court
EMOTIONAL
DISTRESS
MEDICAL CARE

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 meningoenzephalitis 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. Appeals Court
CIVIL COMMITMENT
CONDITIONS

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
EXERCISE
ADA- Americans with
Disabilities Act

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
ISOLATION
MEDICAL CARE

Parkell v. Danberg, 871 F.Supp.2d 341 (D.Del. 2012). A state inmate who developed a staphylococcus infection brought an action against the corporation that contracted with the prison to provide medical services to inmates and the corporation's employees, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs, in violation of Eighth Amendment. The inmate also alleged that the corporation violated his substantive due process rights by refusing to treat him while he was housed in isolation. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The district court held that the inmate stated a § 1983 Eighth Amendment medical needs claim against the employee with his allegations in his complaint that: (1) an employee of the corporation refused to examine the inmate; (2) the employee ignored the inmate's complaints of an infected arm, and refused to administer a pain reliever; (3) over the next few days his condition worsened and correctional officers notified the on-duty physician regarding the inmate's condition; and (4) the physician performed a medical procedure on the inmate's elbow approximately one week following his visit with the employee. The court found that the inmate stated a § 1983 Eighth Amendment medical needs claim against the corporation with his allegations that the corporation had policies, customs, or practices of refusing to treat the inmate, who developed a staphylococcus infection, particularly when he was housed in isolation. According to the court, the inmate stated a § 1983 substantive due process claim against the corporation with his allegations that he was subjected to conditions significantly worse than other inmates under similar circumstances, and that because of his security classification, the corporation refused to treat him while housed in isolation, and refused to enter his cell to provide treatment while he was housed in the infirmary. (Howard R. Young Corr'l. Institution, Delaware)

U.S. District Court
SEGREGATION

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. District Court
ADA- Americans with
Disabilities Act
EXERCISE
MEDICAL CARE
PRETRIAL DETAINEES

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
CHANGE OF
CONDITIONS
SAFETY
SEGREGATION

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
HYGIENE
MEDICAL CARE
PRETRIAL DETAINEES
SEPARATION

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 behav-

ior such as compulsive water drinking that would cause him to die within a matter of hours and did not consciously disregarded that risk, and therefore they were not liable for his death under § 1983. According to the court, while a factfinder might conclude that the guards exhibited a generalized recklessness with respect to the safety of the inmates housed in the administrative segregation unit by failing to conduct hourly checks of the unit, there was no evidence that the guards or supervisors were subjectively aware of the possibility that the detainee might injure himself to the point of death before anyone could intervene. (Elkhart County Jail, Indiana)

U.S. Appeals Court
FOOD

Taylor v. Dormire, 690 F.3d 898 (8th Cir. 2012). A state prisoner brought a § 1983 action against prison officials, alleging that the officials refused to feed the prisoner for several days while he was restrained in connection with his removal from his cell, based on his declaration of his cellmate as an enemy. The district court entered judgment on the jury's verdict for the officials. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the district court's error was not harmless as to its failure to give the prisoner's requested instruction on nominal damages. The court noted that the jury had been instructed that damages constituted a required element of a verdict in favor of the prisoner and that if any element was not proven then the verdict had to be in favor of prison officials. According to the court, the jury must have considered the damages issue, since it wrote a symbol for "zero" in the space on the verdict form for damages. (Jefferson City Correctional Center, Missouri)

U.S. District Court
ALIENS
CLOTHING
EQUAL PROTECTION
FOOD
MEDICAL CARE
PROGRAMS
SANITATION

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 held that the allegations stated a claim under Title VI for disparate impact discrimination, stated a claim for retaliation in violation of the First Amendment, and that the allegations satisfied the requirements for pleading the municipal liability of the county. According to the court, allegations by the United States, that officers from the county sheriff's office routinely and unlawfully targeted Latinos through pretextual traffic stops, crime suppression sweeps, and worksite raids, and that as a result Latinos were far more likely to be deprived of their constitutional rights than non-Latinos, stated a claim for disparate impact discrimination under Title VI by programs or activities receiving federal financial assistance. The court also found that allegations that a former Arizona county attorney acted in concert with the county sheriff's office and the sheriff to file a baseless lawsuit accusing people who had publicly criticized the defendants, and to file baseless state bar complaints against attorneys who spoke out against defendants, and that the defendants used unjustified arrests to intimidate and retaliate against critics of their immigration policies, stated a claim under the Violent Crime Control and Law Enforcement Act for retaliation for exercising First Amendment rights. (Maricopa County Sheriff's Office, Sheriff Joseph M. Arpaio, Arizona)

U.S. District Court
CONDITIONS
SEGREGATION

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. The court held that the inmate stated a First Amendment retaliation claim under § 1983 against a male prison correction officer by alleging that the officer had written a false inmate misbehavior report (IMR) against her three days after she had filed a grievance against him for performing a degrading sexual act in front of her, and that because of the false report she had been forced to spend three months in the prison's special housing unit (SHU). (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
EMOTIONAL
DISTRESS
FOOD
SEGREGATION

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
ADA- Americans with
Disabilities Act
BEDS
FACILITIES
SHOWERS
TOILETS

Wilkins-Jones v. County of Alameda, 859 F.Supp.2d 1039 (N.D.Cal. 2012). A detainee at a county jail who had limited mobility and deformed hands as a result of systemic lupus and rheumatoid arthritis brought an action against the contractor that provided medical care assessment services for detainees, and its employees, alleging violations of Title II of the Americans with Disabilities Act (ADA), the California Disabled Persons Act (CDPA), and the California Unruh Civil Rights Act. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) the private contractor was not liable as a public entity or instrumentality under the ADA; (2) the contractor qualified as a "business establishment," under the California Unruh Civil Rights Act; (3) the complaint properly asserted a deprivation of full and equal accommodations, as required to state a claim under the California Unruh Civil Rights Act; (4) the allegations were insufficient to assert intentional discrimination, as required to state a claim against the contractor for violation of the California Unruh Civil Rights Act; (5) the CDPA applied to county jails and the accommodations and services provided therein; and (6) the allegations stated a claim against contractor under the CDPA. The jail inmate who had limited mobility and deformed hands alleged that she was unable to use the toilet in the jail as needed, causing her injuries, and that she was deprived of access to jail's facilities, beds, showers, walkways, and benches. According to the court, this properly asserted a deprivation of full and equal accommodations, as required to state a claim against the private contractor that contracted with county to provide medical care assessment services for the county jail. (County of Alameda, California)

U.S. District Court
HANDICAPPED
INMATES
PRETRIAL DETAINEES
SAFETY

Woods v. City of Utica, 902 F.Supp.2d 273 (N.D.N.Y. 2012). A wheelchair-using, paraplegic arrestee sued a city, police officer, a county, a former sheriff, and county corrections officers, bringing federal causes of action for violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Fourteenth Amendment equal protection and due process. The arrestee alleged that he was lifted out of his wheelchair and placed on the floor of a sheriff's van, forcing him to maneuver himself onto a bench seat which caused his pants and underwear to fall, exposing his genitals, that he was not secured to the bench with a seatbelt, causing him to be thrown about the passenger compartment and suffer leg spasms during his ride to the jail, that he was forced to urinate into an empty soda bottle and handle his sterile catheter with his hands that were dirty from moving himself around the floor of the van, and that the county corrections officers stood by as he struggled to maneuver himself out of the van and into his wheelchair while other inmates watched. The city and county defendants moved for summary judgment. The district court held that: (1) the city did not fail to accommodate the arrestee's disability, for purposes of the ADA and Rehabilitation Act claims; (2) summary judgment was precluded by fact issues as to whether the arrestee was denied the benefit of safe and appropriate transportation by the county on the day of his arrest when he was moved from a police station to a county jail; (3) the county was entitled to summary judgment to the extent the arrestee's claims involved his transportation from the jail to court proceedings on two other dates; (4) fact issues existed as to whether the county defendants were deliberately indifferent to the paraplegic inmate's known medical need for suppositories every other day, in violation of due process, but they were not deliberately indifferent to his need for catheters and prescription pain medication; and (5) the county defendants were not entitled to qualified immunity. The court noted that while the county defendants disputed the arrestee's version of the facts, corrections officers all denied receiving any training regarding how to transport disabled inmates. (Utica Police Department, Oneida County Correctional Facility, New York)

2013

U.S. District Court
BEDS
SAFETY

Alvarado-David v. U.S., 972 F.Supp.2d 210 (D.Puerto Rico 2013). A prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA), alleging he fell out of his bunk and hit a toilet bowl, breaking his frontal teeth and upper lip because the United States' failed to provide prisoners with ladders to climb to their bunks. The United States moved to dismiss for lack of subject-matter jurisdiction under the FTCA's discretionary function exception. The district court granted the motion. The court held that the decision by Bureau of Prisons (BOP) personnel not to provide ladders or other equipment for the prisoners to climb to their bunks fit within the discretionary function exception to the FTCA. The court noted that no rules or regulations governed the use of ladders or bunk beds in correctional facilities, and the decision not to provide ladders in correctional facilities for safety reasons, as ladders could be broken off and used as weapons or escape devices, was grounded in considerations of public policy. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. District Court
LIGHTING
SANITATION
VENTILATION

Ames v. Randle, 933 F.Supp.2d 1028 (N.D.Ill. 2013). An inmate brought § 1983 Eighth Amendment claims against various employees of the Illinois Department of Corrections (IDOC) who allegedly were responsible for the conditions of the inmate's confinement. The defendants filed a motion to dismiss. The court denied the motion, finding that the inmate adequately pled that Illinois prison officials were deliberately indifferent, as required to state a § 1983 Eighth Amendment claim. According to the court, the inmate alleged that he repeatedly advised the official about the prison's detrimental living conditions and that the official did not make an effort to remedy the conditions, that he informed another official about the intolerable living conditions and that this official did not make an effort to remedy the conditions, and that he discussed the intolerable living conditions with other officials, each of whom also failed to make any efforts to remedy the living conditions. The inmate claimed that he was subjected to unsanitary conditions, a lack of ventilation, and continuous lighting that interfered with his sleep. He also alleged that his housing area had dried bodily fluids on the wall of his cell and a strong odor of ammonia from his uncleaned toilet, that there was pest infestation accompanied by filth and feces, and that there was a complete lack of basic cleaning supplies or even garbage bags. He also cited filthy soiled bedding, missing or dilapidated, and sometimes dangerously damaged cell furniture and fixtures, and badly peeling toxic paint. The inmate suffered from endocarditis, an infection of the lining of the heart, which he claimed was due to the conditions of his confinement, and from which his "numerous, almost constant, fungal infections" stemmed. (Stateville Correctional Center, Illinois Department of Corrections)

U.S. District Court
EMOTIONAL
DISTRESS
SEGREGATION

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
HEARING IMPAIRED

Armstrong v. Brown, 939 F.Supp.2d 1012 (N.D.Cal. 2013). Prisoners brought a class action against the Governor of California, the state Department of Corrections and Rehabilitation and a number of related directors and executive officers, seeking to enforce prior orders requiring the defendants to provide sign language interpreters (SLI), and to hold the defendants in contempt for violations. The district court granted the motion to enforce the prior orders. The court held that setting a policy which failed to provide SLIs for hearing-impaired inmates during rounds by psychiatric technicians warranted enforcement of the order against the defendants, and the defendants' failure to provide SLIs for hearing-impaired inmates at classes attended by deaf inmates also warranted an enforcement order. But the court decided that civil contempt sanctions were not appropriate because officials were making substantial efforts to reach compliance with the orders by voluntarily increasing both contract and civil services positions for qualified SLIs. (Substance Abuse Treatment Facility, California Department of Rehabilitation and Corrections)

U.S. Appeals Court
CIVIL COMMITMENT
TOILETS

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
TEMPERATURE
ADA- Americans with
Disabilities Act
MEDICAL CARE

Ball v. LeBlanc, 988 F.Supp.2d 639 (M.D.La. 2013). State death row inmates brought a § 1983 action against a state department of corrections and state officials, seeking declaratory and injunctive relief based on allegations of violations of the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The district court granted declaratory and injunctive relief in part and denied in part. The court held that the temperature and humidity of cells presented a substantial risk of harm to death row inmates, as required for their claims against the prison and officials, alleging the conditions of confinement violated the Eighth Amendment. The court noted that: (1) the inmates were regularly subjected to temperatures above 90.5 degrees and heat indices above 100 degrees; (2) the heat index inside death row tiers was often higher than that outside the facility; (3) inmates were subjected to consecutive days with heat indices above 100 degrees; (4) inmates were at risk of heat-related illnesses including heat stroke and worsening of their underlying conditions, which included diabetes, hypertension, and uncontrolled blood pressure; and (5) two inmates were over age 55, increasing the risk for them. The court found that prison officials had knowledge that the heat and humidity in death row tiers placed inmates at a substantial risk of harm, as required to find the officials were deliberately indifferent to the serious medical needs for the purpose of the inmates' Eighth Amendment claims. The inmates had submitted multiple administrative complaints regarding the heat, and officials responded that they knew it was "extremely hot." According to the court, prison officials disregarded the substantial risk of serious harm to death row inmates regarding heat and humidity in cells, as required to find that the officials were deliberately indifferent to the serious medical needs for the purpose of the inmates' Eighth Amendment claims, where the officials did not take any actions to reduce the heat conditions despite knowledge of the conditions.

The court found that there was no evidence that death row inmates were limited in any major life activities due to their medical conditions, including hypertension, obesity, and depression, as required for their claims against the prison and officials, alleging violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act. (Louisiana State Penitentiary)

U.S. District Court
EMOTIONAL
DISTRESS
MEDICAL CARE
TRANSFERS

Benton v. Rousseau, 940 F.Supp.2d 1370 (M.D.Fla. 2013). A pretrial detainee, who alleged that he was beaten by drivers while being transported to prison, brought a § 1983 action against drivers of a private company which was in the business of transporting prisoners throughout the State of Florida. The district court held that the inmate established a § 1983 First Amendment retaliation claim and a § 1983 Fourteenth Amendment excessive force claim. According to the court: (1) the prisoner engaged in constitutionally protected speech because he complained about conditions of his confinement in the transport vehicle; (2) the driver of transport vehicle engaged in adverse or retaliatory conduct by pulling the inmate out of the van and onto the ground and beating and kicking the inmate;

and (3) there was a causal connection between the driver's retaliatory action and inmate's protected speech, in that the incident would not have occurred but for the inmate's complaints regarding conditions of his confinement. The court noted that the inmate's injuries included headaches and facial scars, and his injuries, although perhaps not serious, amounted to more than de minimis injuries. The court ruled that the inmate was entitled to \$45,012 in compensatory damages because the inmate had scarring on his face and suffered from headaches and numbness in his side, he suffered the loss of a \$12 shirt, and he suffered mental and emotional anguish as a result of actions of drivers of transport van, who kicked and beat him. The court held that the inmate was entitled to punitive damages in the amount of \$15,000 based on the violation of his First and Fourteenth Amendment rights by the drivers. The court noted that although the drivers were no longer employed by their private employer, the employer did not investigate after the incident nor did it punish the drivers for their actions, and imposition of punitive damages would deter the drivers from taking similar actions in the future. (United States Prisoner Transport, Hernando County Jail, Florida)

U.S. Appeals Court
BEDS
CROWDING
EXERCISE
FLOOR-SLEEPING
MEDICAL CARE
PRETRIAL DETAINEES
SHOWERS
TOILETS
WINDOWS

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. District Court
EMOTIONAL
DISTRESS
MEDICAL CARE

Canales v. Gatzunis, 979 F.Supp.2d 164 (D.Mass. 2013). A former county jail inmate brought an action in state court against a county sheriff's department, the sheriff, the jail superintendent, a state public safety commissioner, and others, alleging the defendants subjected him to reckless, negligent, and cruel medical treatment. Some defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court found that because the county sheriff's department and other county defendants voluntarily removed to inmate's action to federal court, the defendants did not enjoy Eleventh Amendment immunity against any Massachusetts Tort Claims Act (MTCA) claims they would be subject to in state court as a result of waiver.

The court held that the former jail inmate's allegations that the county defendants had a "disorganized medical program" at the jail and failed to maintain a "quality assurance program," and that the jail failed "to maintain adequate and accurate medical records," insufficiently pled that the jail superintendent was personally involved in misinforming the inmate that he had HIV and mistakenly administering another prisoner's HIV medication to the inmate, as would subject the superintendent to supervisory liability for his subordinates' alleged Eighth Amendment violations under § 1983. According to the court, the inmate's allegations that the "defendants" told the inmate that he had HIV and administered HIV medication to him, even though he did not have HIV, did not sufficiently state that the county jail superintendent was personally involved with the inmate's medical treatment or otherwise took any action with respect to the inmate, as would support the inmate's intentional infliction of emotional distress claim against the superintendent, in his individual capacity, under Massachusetts law. (Suffolk County House of Correction, Massachusetts)

U.S. Appeals Court
BEDDING
LIGHTING
RESTRAINTS
TEMPERATURE

Chappell v. Mandeville, 706 F.3d 1052 (9th Cir. 2013). A state prison inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity and the district court granted summary judgment as to some, but not all, of the claims. The defendants appealed. The appeals court reversed. The appeals court held that: (1) it was not clearly established that subjecting the prison inmate to a contraband watch violated the Eighth Amendment prohibition against cruel and unusual punishment, and thus prison officials were entitled to qualified immunity on the Eighth Amendment claim; (2) the contraband watch was not such an extreme change in conditions of confinement as to trigger due-process protection; and (3) it was not clearly established whether a state-created liberty interest existed with regard to the contraband watch, and thus officials were entitled to qualified immunity on the claim that the inmate's right to due process was violated because he was not provided with an opportunity to be heard by the official who ordered contraband watch. The contraband watch conditions included 24-hour lighting, mattress deprivation, taping the inmate into two pairs of underwear and jumpsuits, placing him in a hot cell with no ventilation, chaining him to an iron bed, shackling him at the ankles and waist, and forcing him to eat "like a dog." (California State Prison, Sacramento)

U.S. District Court
CROWDING
FAILURE TO PROVIDE
CARE
MEDICAL CARE

Coleman v. Brown, 922 F.Supp.2d 1004 (E.D.Cal. 2013). State prison inmates brought Eighth Amendment challenges to the adequacy of mental health care and medical health care provided to mentally ill inmates and the general prison population, respectively. The inmates moved to convene a three-judge panel of the district court to enter a population reduction order that was necessary to provide effective relief. The motions were granted and the cases were assigned to same panel, which ordered the state to reduce the prison population to 137.5% of its design capacity. The state moved to vacate or modify the population reduction order. The district court denied the motion. The three-judge panel of the district court held that: (1) the state's contention that prison crowding was reduced and

no longer a barrier to providing inmates with care required by the Eighth Amendment did not provide the basis for a motion to vacate the order on the ground that changed circumstances made it inequitable to continue applying the order; (2) the state failed to establish that prison crowding was no longer a barrier to providing inmates with care required by the Eighth Amendment; and (3) the state failed to establish it had achieved a durable remedy to prison crowding. (California Department of Rehabilitation and Corrections)

U.S. District Court
CAPACITY
CROWDING
MEDICAL CARE

Coleman v. Brown, 960 F.Supp.2d 1057 (E.D.Cal. 2013). California prisoners with serious mental disorders brought a class action against a Governor, alleging that due to prison overcrowding, they received inadequate mental health care, in violation of the Eighth Amendment prohibition of cruel and unusual punishment. Separately, California prisoners with serious medical conditions brought a class action asserting constitutional claims similar to those in the other action. In the case concerning mental health care, the district court found Eighth Amendment violations and appointed a special master to oversee the development and implementation of a remedial plan. In the case concerning medical care, the State stipulated to a remedial injunction, and, after the State failed to comply with that injunction, the district court appointed a receiver to oversee remedial efforts. A three judge district court panel consolidated the two cases and the panel entered a remedial order requiring the State to reduce its prison population to 137.5 percent of design capacity within two years. The Governor appealed. The United States Supreme Court affirmed the population reduction order. The district court subsequently denied the defendants' motion to vacate or modify the population reduction order, and directed the defendants to comply with the population reduction order. The defendants' moved to stay the order directing compliance pending appeal to the United States Supreme Court. The district court denied the motion, finding that: (1) the State was not likely to succeed on the merits of the prisoners' lawsuit challenging prison conditions; (2) the State would not be irreparably injured absent a stay; (3) issuance of a stay would substantially injure the prisoners; and (4) the public interest favored denying the stay. (California)

U.S. District Court
ALIENS
FOOD
MEDICAL CARE

Dhiab v. Obama, 952 F.Supp.2d 154 (D.D.C. 2013). An alien who was engaged in a voluntary hunger strike while detained at the U.S. Naval Base at Guantanamo Bay, Cuba, moved for a preliminary injunction against force-feeding him and the administration of medications related to the force-feeding without his consent. The district court denied the motion, finding that it lacked jurisdiction to consider the motion. (U.S. Naval Base at Guantanamo Bay, Cuba)

U.S. District Court
BEDS
FOOD
HYGIENE
OVERCROWDING
PRETRIAL DETAINEES
SAFETY
SANITATION

Duran v. Merline, 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee's legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee's Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. The detainee asserted that overcrowding at the county detention facility, which allegedly led to the detainee being forced to sleep and eat his meals next to open toilet, and led to inmate-on-inmate violence, contributed to his assault by another inmate. According to the court, the long-standing conditions of confinement whereby the county detention facility was overcrowded for at least 24 years and facility officials "triple-celled" inmates, allegedly leading to unsanitary conditions, amounted to a "custom" for the purposes of the former detainee's § 1983 Fourteenth Amendment conditions of confinement claim against a former warden in his official capacity. The court held that the food service provider's serving the detainee cold meals for a 45-day period while the kitchen in the county detention facility was being renovated, was not "punishment," as would support the inmate's § 1983 Fourteenth Amendment conditions of confinement claim against the provider, absent evidence that the food served to the detainee was spoiled or contaminated, that a significant portion of the detainee's diet consisted of such food, or that the food service caused more than a temporary discomfort. The court also held that the alleged actions of the food service provider in serving the detainee one food item when another ran out, failing to serve bread with the inmate's meal, serving the inmate leftovers from days before, serving juice in a dirty container on one occasion, serving milk after its expiration date, and serving meals on cracked trays that caused the detainee to contract food poisoning, did not amount to a substantial deprivation of food sufficient to amount to unconstitutional conditions of confinement, as would violate the inmate's due process rights. (Atlantic County Justice Facility, New Jersey)

U.S. District Court
CROWDING
JUVENILES

E.A.F.F. v. U.S., 955 F.Supp.2d 707 (W.D.Tex. 2013). Unaccompanied alien minors brought an action against Office of Refugee Resettlement (ORR) officials, alleging they were physically and sexually abused while they were in detention awaiting final adjudication of their immigration status. The officials moved for partial summary judgment. The district court granted the motions. The court noted that a person detained for deportation is equivalent to a pretrial detainee, and a pretrial detainee's constitutional claims are considered under the Due Process Clause. The court held that the officials could not be held liable for due process violations that occurred when the unaccompanied alien minors were physically and sexually abused as a result of alleged overcrowding at a detention facility, where they were being held while awaiting final adjudication of their immigration status, and where there was no evidence that the officials were responsible for decisions regarding the facility's capacity.

According to the court, isolated incidents of physical and sexual abuse by staff members at the detention facility were insufficient to put the officials on notice of a substantial risk of future abuse, as required to hold the officials liable for deliberate indifference in failing to protect the minors' safety in violation of their due process rights. The court noted that other incidents of alleged abuse were investigated by the Texas Department of Family and Protective Services and did not result in any abuse findings. The court found that officials' failure to systematically interview minors concerning their abuse allegations did not amount to deliberate indifference to their safety in

violation of their due process rights, where officials spoke to some of the minors during their monitoring visits, and clinicians were on-site and available to speak with the minors on a regular basis. The court held that the officials could not be held liable in their supervisory capacities on a theory of failure to train or supervise, for due process violations arising from alleged physical and sexual abuse by staff members at the detention facility, where staff members received training in behavior management and de-escalation techniques, officials responded to reports of abuse by recommending or providing further training, officials adopted safety policies designed to prevent abuse, and officials recommended that staff members work in pairs and they were unaware that staff members were working individually. (Nixon facility Operated by Away From Home, Inc., Texas)

U.S. Appeals Court
BEDDING
CLOTHING
FOOD
DINING
MEDICAL CARE
ISOLATION
SEGREGATION

Earl v. Racine County Jail, 718 F.3d 689 (7th Cir. 2013). An inmate brought a § 1983 action against a county jail and various jail officers, asserting claims for denial of due process and deliberate indifference to his serious medical condition. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The appeals court held that the inmate's five days on suicide watch were neither long enough nor harsh enough to deprive him of a due-process-protected liberty interest, where: (1) the only changes to the inmate's meals were that trays upon which food was served were disposable foam rather than plastic; (2) eating utensils were quickly removed after each meal; (3) the inmate was not denied bedding but was given a mattress and a blanket; (4) the inmate was denied writing materials for only the first 48 hours; and (5) rather than being prohibited human contact, deputies were assigned to closely and personally monitor the inmate to ensure his safety. The court found that jail officers were not deliberately indifferent to the inmate's allergic reaction to suicide garments in violation of the Eighth Amendment. The court noted that after the inmate told an officer about his allergic reaction to a suicide gown, the officer called a nurse who immediately examined the inmate and gave him cream and medication, and the officers appropriately deferred to the nurse's medical decision that the inmate did not need different garments because there was no sign of rash or bumps on the inmate. (Racine County Jail, Wisconsin)

U.S. District Court
FACILITIES
HYGIENE
SANITATION
TOILETS

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

U.S. District Court
CIVIL COMMITMENT
HOT WATER

Grohs v. Yatauro, 984 F.Supp.2d 273 (D.N.J. 2013). A civilly-committed resident at a special treatment unit (STU) operated by the New Jersey Department of Corrections (NJDOC) brought action against NJDOC officials, alleging violations of his substantive due process rights under § 1983. The district court held that the resident's claims against the officials in their official capacities were barred by sovereign immunity. The court held that the resident's allegations adequately pled the officials' personal involvement in his complaint that: (1) there were visibly leaking steam pipes in a special treatment unit (STU) for which trash cans were used to collect water; (2) NJDOC officials personally toured STU; (3) STU received numerous written complaints from residents about inadequate hot water; and (4) an STU assistant administrator told the resident that defective piping valves were too expensive to repair. The court found that the officials were subject to liability under § 1983 in their individual capacities. The court held that NJDOC officials were not entitled to qualified immunity from the civilly committed resident's § 1983 conditions of civil commitment claim under the Due Process Clause, arising from inadequate hot water at a special treatment unit (STU) in which he was housed. (Special Treatment Unit, Avenel, Middlesex County, New Jersey)

U.S. District Court
FACILITIES
SAFETY

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

U.S. Appeals Court
DISCIPLINE
SEGREGATION
CELLS
EXERCISE
SHOWERS

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
ADA- Americans with
Disabilities Act
PRETRIAL DETAINEES

Kramer v. Conway, 962 F.Supp.2d 1333 (N.D.Ga. 2013). A pretrial detainee at a county jail brought an action against the jail, the jail administrator, and a county sheriff, alleging that conditions of his confinement violated his right to practice his Orthodox Jewish faith, that the defendants violated his right to possess legal reference books, and that the defendants failed to accommodate his physical disabilities. The detainee moved for a preliminary and a permanent injunction and moved for leave to file a second amendment to his verified complaint. The defendants moved for summary judgment. The district court denied the motions in part and granted the motion in part. The court held that the pretrial detainee's allegation that the county jail denied him books needed to practice his Orthodox Jewish religious faith failed to establish a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA), absent evidence that the county jail received federal funds in connection with its policies limiting the number and type of books allowed in cells. The court held that the county jail's policy of limiting the number of religious books that the pretrial detainee, an Orthodox Jew, could keep in his cell, but providing him access to others that were not in his cell, was based on legitimate penological interests, and thus, did not violate the detainee's rights under the Free Exercise Clause. According to the court, a uniformly applied books-in-cell limitation was reasonable in a facility that housed 2,200 inmates, the limitation was applied in a neutral way and the expressive content of books was not considered, books in sufficient quantities could be used as weapons and presented fire and obstacle hazards, access to other books was made by exchanging out titles and by allowing the copying of parts or all of a text, and the detainee was not denied access to nine religious books he claimed were required in practicing his faith, but rather, argued only that access was required to be more convenient.

The court found that the jail's policy of prohibiting hard cover books in cells, including limiting religious texts to those that did not have hard covers, was based on legitimate penological interests, and thus, did not violate rights of the pretrial detainee, an Orthodox Jew, under the Free Exercise Clause. The court noted that evidence at hearing on the detainee's motion for injunctive relief showed that hardcover books posed safety and security risks because hard covers could be used to conceal contraband and because of their potential use as weapons, the policy was applied in a neutral way, and the expressive content of books was not considered.

The court found that the jail's policy of limiting package mail to four pounds was based on legitimate penological interests, and thus, did not violate rights as applied to the pretrial detainee, an Orthodox Jew, under the Free Exercise Clause when the jail rejected one of detainee's packages that contained more than four pounds of books. The court noted that the jail received a large volume of mail and other items each day, all of which had to be searched for contraband and threats their contents could pose to the safety and security of inmates and jail officials, the policy was applied in a neutral way, and the expressive content of books was not considered.

The court held that the jail's policy that limited the number and type of books allowed in a cell did not violate the pretrial detainee's Due Process rights, where there was no evidence that the policy was intended to punish the detainee, the jail's policies prohibiting hard cover books and limiting the number of books allowed in a cell were reasonably related to legitimate penological interests, and the jail gave the detainee substantial access to legal materials by increasing the time he was allowed in the library and liberally allowing him to copy legal materials to keep in his cell. The court held that the jail, the jail administrator, and the county sheriff's denial of a typewriter in the pretrial detainee's cell to accommodate his alleged handwriting disability did not violate the detainee's rights under Title II of the Americans with Disabilities Act (ADA). The court noted that the detainee was able to write by hand, although he stated he experienced pain when doing so. According to the court, if the detainee chose to avoid writing by hand he had substantial access to a typewriter in the jail's law library, there was no permanent harm from the handwriting he performed, there was no evidence the detainee was not able to adequately communicate with lawyers and jail officials without a typewriter in his cell, and the accommodation of an in-cell typewriter would impose an undue burden on jail personnel because metal and moving parts of typewriter could be used as weapons. (Gwinnett County Jail, Georgia)

U.S. Appeals Court
CLOTHING
FOOD

Mays v. Springborn, 719 F.3d 631 (7th Cir. 2013). A former state prisoner brought an action against prison officials, asserting claims based on strip searches at prisons and alleging retaliation for his complaints about the searches, denial of his request for a dietary supplements which he considered to be religious necessities, inadequacy of his diet, failure to issue certain winter clothing items, and censorship of pages in a magazine mailed to him. The district granted summary judgment in favor of the officials on the claims about prison food and clothing and granted the officials judgment as a matter of law on the claims about strip searches, retaliation, and censorship. The prisoner appealed. The appeals court affirmed in part, vacated the judgment with respect to the strip searches, and remanded. On remand, the district court entered judgment, upon a jury verdict, in favor of the officials as to the strip search claims, and the prisoner again appealed. The appeals court reversed and remanded. The appeals court held that: (1) even if there was a valid penological reason for the strip searches conducted on a prisoner, the manner in which the searches were conducted was itself required to pass constitutional muster, and (2) a jury instruction requiring the prisoner to negate the possibility that strip searches would have occurred even if there had been no retaliatory motive was plain error. (Stateville Correctional Center, Illinois)

U.S. District Court
MEDICAL CARE
PRETRIAL DETAINEES
SANITATION
SEGREGATION
SHOWERS
TOILETS

Nelson v. District of Columbia, 928 F.Supp.2d 210 (D.D.C. 2013). A detainee brought a § 1983 claim against the District of Columbia arising from his stay in jail. The defendant moved to dismiss and the district court granted the motion. The court held that denial of one telephone call and access to stationery during the detainee's five-day stay in a "Safe Cell," which was located in the jail's infirmary, did not implicate his First Amendment right of free speech or right of access to courts. The court found that the detainee's alleged exposure to "dried urine on the toilet seat and floor" and garbage during his five-day stay, along with the denial of a shower, did not rise to the level of a Fifth Amendment due process violation. According to the court, placement of detainee in a Safe Cell was not motivated by a desire to punish the detainee, but rather by a nurse's desire to attend to the detainee's ailments after his "legs and back gave out" twice. The court noted that denial of the detainee's request to have the cell cleaned was for the non-punitive reason that the detainee would not be in the cell that long. (D.C. Jail, District of Columbia)

U.S. District Court
ADA- Americans with
Disabilities Act
HYGIENE
MEDICAL CARE
SAFETY

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
SEGREGATION
PRETRIAL DETAINEES

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
ASBESTOS
FACILITIES
MEDICAL CARE

Pratt v. City of New York, 929 F.Supp.2d 314(S.D.N.Y. 2013). A prisoner brought a § 1983 action against a city, its Commissioner of Corrections, and other prison officials, alleging cruel and unusual punishment in violation of Eighth Amendment based on the prison's failure to address and mitigate asbestos exposure in prison dormitories. The district court denied the defendants' motion to dismiss for failure to state a claim. The court held that the prisoner stated a § 1983 claim that the prison's failure to address and mitigate friable asbestos exposure constituted cruel and unusual punishment under the Eighth Amendment, by alleging that the prison dormitory was contaminated with asbestos and that prison maintenance deliberately avoided testing potentially contaminated pipes and older floor tiles for asbestos exposure. According to the court, exposure to friable asbestos poses a sufficiently serious risk to a prisoner's health as to constitute a serious deprivation, as an element of a claim of cruel and unusual punishment under the Eighth Amendment. The prisoner alleged that most of the facility pipes and the ceiling heating system were deteriorating due to roof leaks, and that leaking water captured small asbestos particles ("friable asbestos") from the deteriorated pipes and heating system and brought the friable asbestos into the dormitory. According to the prisoner, the friable asbestos is also blown throughout the dormitory by the ceiling heating system. The prisoner was a licensed asbestos remover. (Anna M. Koss Center, Rikers Island, New York City, N.Y.)

U.S. District Court
CLASSIFICATION
EQUAL PROTECTION
RACIAL
DISCRIMINATION
SAFETY
THREATS
USE OF FORCE

Randle v. Alexander, 960 F.Supp.2d 457 (S.D.N.Y. 2013). An African-American state inmate with a history of serious mental illness brought an action against officials of the New York State Department of Corrections and Community Supervision (DOCCS), correctional officers, and mental health personnel, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs and that he was retaliated against, in violation of his First Amendment rights, among other claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the correctional officers' alleged actions in forcing the inmate to fight a fellow inmate, and threatening to beat the inmate with a baton and engage in a joint cover-up if the two inmates did not "finish" their fight within a specified area of the prison, which ultimately resulted in the fellow inmate sustaining fatal injuries in the fight, had no legitimate penological purpose, and was far afield of the species of force employed to restore or maintain discipline. The court held that the alleged actions reflected indifference to inmate safety, if not malice toward the inmate, as supported the inmate's § 1983 Eighth Amendment failure to protect claim. According to the court, the alleged forced fight between the inmate and a fellow inmate, orchestrated, condoned, and covered up by correctional officers was an objectively serious violation of the inmate's Eighth Amendment right to reasonably safe conditions of confinement, and the intent evinced by such activity was, at the very least, one of indifference to inmate safety, supporting the inmate's § 1983 Eighth Amendment conditions of confinement claim against the officers.

The court held that the African-American state inmate's allegations in his complaint that a correctional officer arranged inmates in his company so that white inmates were close to officers' posts, whereas black inmates were placed further away, that white inmates were given superior jobs, that the officer's efforts in forcing a fight between the inmate and a fellow inmate were done purposefully for his amusement because both inmates were black, and that the officer's treatment of the inmate and other black inmates was motivated by his intent to discriminate on the basis of race and malicious intent to injure inmates, stated a § 1983 equal protection claim against the officer. The court ruled that the correctional officers were not entitled to qualified immunity from the inmate's § 1983 Eighth and Fourteenth Amendment claims because inmates had a clearly established right to remain incarcerated in reasonably safe conditions, and it was objectively unreasonable to threaten inmates until they agreed to fight each other in front of prison officials.

The court found that the inmate stated an Eighth Amendment inadequate medical care claim against mental health personnel. The inmate alleged that he had a history of serious mental illness, that his symptoms increased following a forced fight with a fellow inmate, that the inmate attempted suicide on three occasions, two of which required his hospitalization, that prison mental health personnel evidenced deliberate indifference to his medical needs, as they recklessly disregarded the risk the inmate faced as result of special housing unit (SHU) confinement, and that the inmate was confined to SHU despite a recommendation that he be placed in a less-restrictive location. (Green Haven Correctional Facility, Protective Custody Unit, New York State Department of Corrections)

U.S. District Court
LIGHTING
MEDICAL CARE
ADA- Americans with
Disabilities Act

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. The court found that the allegedly excessive bright lighting at prison facilities which was left on for 24 hours-a-day, was related to a legitimate penological concern of providing security for staff and inmates, and thus the lighting did not violate the Eighth Amendment. (SCI Graterford, SCI Greene, Pennsylvania)

U.S. District Court
FLOOR-SLEEPING
MEDICAL CARE
USE OF FORCE

Robinson v. Phelps, 946 F.Supp.2d 354 (D.Del. 2013). A state prisoner brought a § 1983 action against prison officials alleging excessive force and failure to protect. The district court held that the prisoner stated cognizable and non-frivolous claims for excessive force, failure to protect, and denial of medical care. The prisoner alleged that on one occasion a sergeant assaulted him and that a lieutenant arrived during the assault and that he sustained injuries but was denied medical care by these officers and other prison personnel, that another sergeant shoved and pushed him when he was taken to a medical grievance hearing, making his injuries worse, that this sergeant shoved him to the ground while escorting him to the shower, and then dragged him when he could not get up, requiring that he be taken away by stretcher, and that other officers later choked him until he lost consciousness.

The court found that the prisoner also stated cognizable and non-frivolous Eighth Amendment claims against a prison physician for denial or delay of medical treatment; the prisoner alleged that after he was assaulted by a corrections officer, he was seen by the physician, who would not prescribe pain medication and advised the prisoner that he would be x-rayed within seven to ten days, but the x-rays were not taken for a month and a half, and he alleged that some months later he was taken to an outside facility for a magnetic resonance imaging (MRI) of the neck and back. According to the court, the prisoner's allegations were sufficient to state an Eighth Amendment claim that the physicians denied his requests for medically necessary accommodations. The prisoner alleged that medical officials did not authorize his housing on a lower bunk and, as a result, he slept on the floor, that an officer later moved him to an upstairs cell even though he knew that the prisoner required lower housing due to his neck and back injuries, and that the prisoner showed the officer a memo from a superior officer indicating the prisoner needed the housing. (James T. Vaughn Correctional Center, Delaware)

U.S. Appeals Court
CLASSIFICATION
SAFETY

Smith v. Sangamon County Sheriff's Dept., 715 F.3d 188 (7th Cir. 2013). A pretrial detainee filed suit under § 1983 against a sheriff's department to recover for injuries sustained when he was severely beaten by another inmate housed in a maximum-security cellblock. The district court entered summary judgment for the sheriff's department, and the detainee appealed. The appeals court affirmed. The court held that the detainee failed to establish that the security classification policy used by the sheriff's department to assign inmates to cellblocks within the jail was

deliberately indifferent to inmate safety in violation of his due-process rights. The court noted that: (1) the detainee presented no evidence that the classification policy created a serious risk of physical harm to inmates, much less that the sheriff's department knew of it and did nothing; (2) the attack by the detainee's cellmate was not enough to establish that the policy itself systematically exposed inmates like the detainee to a serious risk of harm; and (3) it was unclear that a policy strictly segregating those accused of nonviolent crimes from those accused of violent crimes would do a better job of ensuring inmate safety than the multiple-factor classification system used by the sheriff's department. The detainee claimed that the Department's approach to classifying inmates for cellblock placement ignored serious risks to inmate safety because the security classification policy fails to separate "violent" from "nonviolent" inmates and thus fails to protect peaceful inmates from attacks by inmates with assaultive tendencies. The appeals court described the classification practices: "A classification officer interviews each new detainee and reviews a range of information, including the inmate's age, gender, gang affiliation, medical concerns, current charge, criminal history, behavioral and disciplinary history within the jail, and any holds due to parole violations. Pursuant to standards recommended by the American Correctional Association, the classification policy assigns point values within these categories, with higher point values corresponding to lower security risks." (Sangamon County Detention Facility, Illinois)

U.S. District Court
FLOOR-SLEEPING
MEDICAL CARE

Staples v. U.S., 948 F.Supp.2d 1 (D.D.C.2013). A federal prisoner brought a pro se action against the United States and several employees of the Bureau of Prisons, alleging violations of the Eighth Amendment. The district court held that the inmate stated Eighth Amendment violations with his allegations that: (1) two corrections officers at the federal prison ignored the inmate's medical restriction, which required him to sleep on a lower bunk bed; (2) the officers told the prisoner to sleep on a top bed or to sleep on the floor; (3) he was forced to sleep on the floor and suffered unnecessary physical pain in his back and left hip; and (4) his condition was ignored. The prisoner alleged that the conditions continued for over two weeks in spite of his complaints. (Federal Correctional Institution Schuylkill, Minersville, Pennsylvania)

U.S. District Court
CONDITIONS
EQUAL PROTECTION
SEGREGATION
TOTALITY OF
CONDITIONS

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. Appeals Court
CELLS
EMOTIONAL
DISTRESS
EXERCISE
HYGIENE
MEDICAL CARE
OVERCROWDING

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

U.S. Appeals Court
BEDDING
CELL CAPACITY
HEATING
NOISE
MATTRESS
SAFETY
SANITATION
VENTILATION

Walker v. Schult, 717 F.3d 119 (2nd Cir. 2013). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a warden and various other prison officials and employees, alleging violations of the Eighth Amendment. The district court granted the defendants' motion to dismiss. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's allegations were sufficient to plead that he was deprived of the minimal civilized measure of life's necessities and was subjected to unreasonable health and safety risks, as required to state a § 1983 claims against prison officials for violations of the Eighth Amendment. The prisoner alleged that: (1) for approximately 28 months he was confined in a cell with five other men with inadequate space and ventilation; (2) the heat was stifling in the summer and it was freezing in the winter; (3) urine and feces splattered the floor; (4) there were insufficient cleaning supplies; (5) the mattress was too narrow for him to lie on flat; and (6) noisy and crowded conditions made sleep difficult and created a constant risk of violence. The court also found that the prisoner's allegations were sufficient to plead that prison officials knew of and disregarded excessive risks to his health and safety, as required to find that the officials were deliberately indifferent. The prisoner alleged that officials knew of overcrowding in his cell, that he spoke with some officials about the conditions, that officials were aware noise was loud and constant, that they were aware of temperature issues, that the prisoner informed officials that his bed was too narrow, that one official failed to issue cleaning supplies, and that conditions did not change despite his complaints. (Federal Correctional Institution, Ray Brook, New York)

U.S. District Court
EMOTIONAL
DISTRESS
HYGIENE
MEDICAL CARE

Williams v. Erickson, 962 F.Supp.2d 1038 (N.D.Ill. 2013). A state inmate brought an action alleging that a prison nurse's refusal to open the seal on a new colostomy bag so that he could change the bag violated the Eighth Amendment and Illinois law. The defendants moved to dismiss, and the district court denied the motion in part. The court held that the inmate's allegations were sufficient to: (1) state a claim for deliberate indifference to his serious medical needs; (2) state a claim for deliberate indifference to conditions of confinement; and (3) state a claim for intentional infliction of emotional distress (IIED) under Illinois law. The court noted that the inmate was required to sit in fecal waste for four hours while medical personnel who had the means of remedying the problem deliberately ignored him. (Stateville Correctional Center, Illinois Department of Corrections)

2014

U.S. Appeals Court
ISOLATION
PRIVILEGES

Brown v. Oregon Dept. of Corrections, 751 F.3d 983 (9th Cir. 2014). A state prison inmate brought a pro se § 1983 action against the Oregon Department of Corrections alleging that prison officials violated his due process rights by housing him in an intensive management unit without periodic, meaningful review of his status. The defendants moved for summary judgment. The district court granted the motion. The inmate appealed. The appeals court affirmed. The court held that the inmate's 27-month confinement in an intensive management unit deprived him of a due-process protected liberty interest, but the inmate's due-process protected liberty interest in periodic, meaningful review of his status was not clearly established, and thus prison officials were entitled to qualified immunity. The court noted that the inmate experienced an atypical and significant hardship in that he was subjected to solitary confinement for over 23 hours each day, with almost no interpersonal contact, and he was denied most privileges afforded to inmates in the general population. (Snake River Correctional Institution, Oregon)

U.S. District Court
CROWDING
TEMPERATURE
SANITATION
FOOD
TOILETS

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

U.S. Appeals Court
SEGREGATION
OUT OF CELL TIME
SEARCHES
RESTRAINTS
EXERCISE
ISOLATION

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 officials appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that: (1) reasonable prison officials would not have known that the pretrial detainee's substantive due process rights and procedural due process rights would have been violated by holding him in disciplinary segregated confinement throughout the period of pretrial detention as punishment for conduct that had occurred while he was imprisoned during a prior criminal sentence; (2) the detainee's two prior convictions were not sufficient to establish reasonable expectation after he had been released from custody that he would re-offend; (3) the detainee was not the "prevailing party" for the purpose of attorneys' fees and costs with regard to a declaratory judgment entered on his behalf as it related to his rights as a detainee; (4) 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. (Mass. Corr’l. Institution at Cedar Junction)

U.S. Appeals Court
LIGHTING

Greening 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
STAFFING
OVERCROWDING

Hernandez v. County of Monterey, 70 F.Supp.3d 963 (N.D.Cal. 2014). Current and recently released inmates from a county jail brought an action against the county, the sheriff’s office, and the private company that administered all jail health care facilities and services, alleging, on behalf of a class of inmates, that substandard conditions at the jail violated the federal and state constitutions, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and a California statute prohibiting discrimination in state-funded programs. The inmates sought declaratory and injunctive relief. The defendants filed motions to dismiss. The district court denied the motions. The court held that both current and recently released inmates had standing to pursue their claims against the county and others for allegedly substandard conditions at the jail, even though the recently released inmates were no longer subject to the conditions they challenged. The court noted that the short average length of stay of inmates in the proposed class, which was largely made up of pretrial detainees, was approximately 34 days, and that short period, coupled with the plodding speed of legal action and the fact that other persons similarly situated would continue to be subject to the challenged conduct, qualified the plaintiffs for the “inherently transitory” exception to the mootness doctrine.

The court found that the inmates sufficiently alleged that the private company that administered all jail health care facilities and services operated a place of public accommodation, as required to state a claim for violation of ADA Title III. The court noted that: “The complaint alleges a litany of substandard conditions at the jail, including: violence due to understaffing, overcrowding, inadequate training, policies, procedures, facilities, and prisoner classification; inadequate medical and mental health care screening, attention, distribution, and resources; and lack of policies and practices for identifying, tracking, responding, communicating, and providing accessibility for accommodations for prisoners with disabilities.” (Monterey County Jail, California)

U.S. District Court
TEMPERATURE

Hinojosa v. Livingston, 994 F.Supp.2d 840 (S.D.Tex. 2014). The mother of a former inmate who died of hyperthermia while incarcerated brought an action against the prison’s health care provider, asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging the provider’s failure to make accommodations for the inmate’s disabilities resulted in the inmate’s death. The provider moved to dismiss. The district court denied the motion. The court held that the mother alleged sufficient facts to state that the inmate was discriminated against by the prison’s health care provider, in support of her claims under the ADA and the Rehabilitation Act, by alleging that the provider knew of the risks and dangers associated with certain medical conditions and medications, that the provider knew the inmate suffered from those conditions and used those medications, and that despite that knowledge, the provider failed to make reasonable accommodations, resulting in the inmate suffering more pain and punishment than non-disabled prisoners, namely, his death. The court noted that the mother alleged that the provider knew both that the inmate suffered from hypertension, diabetes, schizophrenia, and/or depression, and was prescribed medications to treat his disabilities, and that extreme temperatures could be deadly, but still failed to protect the inmate from the extreme temperatures that ultimately resulted in the inmate’s death. The court found that the mother alleged sufficient facts concerning the accommodations that should have been provided by the prison’s health care provider without a request, but were denied or refused, as well as which facilities, programs, or services should have been modified by the provider, to state claims under the ADA and the Rehabilitation Act. The mother complained that the provider’s intake process was flawed in that it could take up to 10 days for prisoners to receive an intake physical, and that the delay created a loophole that left inmates with heat sensitive conditions and disabilities especially vulnerable to death because they did not receive accommodations for their heat sensitive disabilities, and that the provider’s failure to employ 24-hour medical staff at the prison resulted in a fatal delay and denial of vital medical care to the inmate. (University of Texas Medical Branch, Texas Department of Criminal Justice Garza West Unit)

U.S. District Court
CLOTHING
MATTRESS
MEDICAL CARE
SHOWERS
FOOD

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
TOILET
SHOWER
WATER

Imhoff v. Temas, 67 F.Supp.3d 700 (W.D.Pa. 2014). A pretrial detainee brought an action against employees of a county correctional facility, alleging deliberate indifference to his serious medical need, violation of his rights under the Fourteenth Amendment with regard to conditions of his confinement, and excessive force in violation of the Eighth Amendment. The employees moved to dismiss. The district court granted the motion in part and denied in part. The court found that the detainee's allegations against the employees in their individual capacities regarding the intentional denial of medical treatment, excessive use of force, and violation of his rights under Fourteenth Amendment with regard to conditions of his confinement were sufficient to set forth a plausible claim for punitive damages. The detainee alleged that he was denied basic human needs such as drinking water, access to a toilet and toilet paper, and toiletries such as soap and a toothbrush. (Washington County Correctional Facility, Pennsylvania)

U.S. District Court
SANITATION
PLUMBING
TOILETS
LAUNDRY
FOOD
EXERCISE

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
SHOWERS
PLUMBING
HOT WATER

Morris v. Corrections Corporation of America, 75 F.Supp.3d 457 (D.D.C. 2014) A former District of Columbia inmate brought a state-court negligence action against a private prison operator, seeking damages for a scrotal burn injury he allegedly sustained when the water temperature in a prison shower spiked unexpectedly. The operator moved the action to federal court, and moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the operator had notice of allegedly dangerously high water temperatures in the prison showers, and the operator's alleged breach of its duty to properly maintain the shower facilities was not the proximate cause of the scrotal burn. (Correctional Treatment Facility, operated by Corrections Corporation of America, Washington, D.C.)

U.S. Appeals Court
ISOLATION
MEDICAL CARE

Parsons v. Ryan, 754 F.3d 657 (9th Cir. 2014). State prisoners, and the state's authorized protection and advocacy agency, filed a class action for declaratory and injunctive relief against senior officials from the Arizona Department of Corrections (ADC), asserting Eighth Amendment claims, based on allegedly serious systemic deficiencies in conditions of confinement in isolation cells, and in the provision of privatized medical, dental, and mental health care services. The district court granted class certification and prison officials appealed. The appeals court affirmed. The court found that the prisoners were not merely aggregating many claims of individual mistreatment, and instead were alleging that ADC policies and practices of statewide and systemic application exposed all inmates in ADC custody to substantial risk of serious harm, to which the senior officials allegedly were deliberately indifferent, even if the risk might ultimately result in different future harm for different inmates. (Arizona Department of Corrections)

U.S. Appeals Court
SAFETY

Pyles v. Fahim, 771 F.3d 403 (7th Cir. 2014). A state prisoner brought a § 1983 action against a warden, medical contractor, and the contractor's physicians, alleging deliberate indifference to the risk of injury and to his medical needs. After dismissing the warden at the screening of the complaint, the district court granted the remaining defendants summary judgment. The prisoner appealed. The appeals court affirmed. The court held that a wet stairway, on which the prisoner allegedly slipped, was not a hazardous condition of confinement, in violation of the Eighth Amendment. The court found that the physician's failure to refer the prisoner to a specialist after the prisoner complained of back pain following a fall in a wet stairway was not deliberate indifference to the prisoner's serious medical needs, in violation of the Eighth Amendment, where the prisoner had a common ailment, the physician prescribed medications, and, after those medications did not appear to help, the physician tried new medications or dosages. (Menard Correctional Center, Illinois)

U.S. District Court
CLASSIFICATION
MEDICAL CARE
RACIAL DISCRIMINATION
SANITATION

Sherley v. Thompson, 69 F.Supp.3d 656 (W.D.Ky. 2014). A state prisoner filed a pro se § 1983 action against the Commissioner of the Kentucky Department of Corrections (DOC), a prison warden, and other prison officials, alleging that his conditions of confinement violated his Eighth Amendment rights, that he was deprived of medical treatment in violation of the Eighth Amendment, and was subjected to race discrimination in violation of the Equal Protection Clause. The district court dismissed the case, in part. The court held that the prisoner stated claims against the warden and prison administrators for violation of his equal protection rights and his conditions of confinement. According to the court, the prisoner stated an Eighth Amendment claim against one prison nurse by alleging that the nurse failed to provide him with appropriate medical treatment for ant bites he sustained, due to his inability to pay for treatment.

The prisoner alleged that the prison had a policy or custom of segregating blacks and non-blacks, and that prison officials refused to place him in a non-black cell to get away from pests in his cell. The court held that the administrators allowed ants to infest his cell for weeks and that as a result, he received ant bites that caused him to scratch until his skin was broken due to severe itching, in violation of his conditions of confinement rights under § 1983 and the Eighth Amendment. (Little Sandy Correctional Complex, Green River Correctional Complex, Kentucky)

U.S. District Court
CLASSIFICATION
CLOTHING
EMOTIONAL DISTRESS
SEPARATION

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

U.S. Appeals Court
SEGREGATION
FOOD
CLOTHING
HYGIENE
MEDICAL CARE

Townsend v. Cooper, 759 F.3d 678 (7th Cir. 2014). An inmate suffering from a significant mental illness brought a § 1983 action against prison officials, claiming that imposition of a behavior action plan in response to the inmate's disruptive behavior and threats of suicide violated his Fourteenth Amendment due process rights, deprived him of the minimal civilized measure of life's necessities and exhibited an indifference to his serious medical needs in violation of the Eighth Amendment. The district court granted summary judgment for the prison officials and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the behavior action plan resulted in an atypical and significant hardship compared to ordinary prison life, and thus, the inmate had a liberty interest in not being placed on the plan sufficient to support his Fourteenth Amendment due process challenge against the prison officials, where the plan involved removal of the inmate's personal property from his cell, provision of a bag lunch, provision of a paper gown, and limited access to toiletries. The court found that summary judgment was precluded by genuine issues of material fact as to whether prison officials acted in disregard of a substantial risk of serious harm to the inmate, and a fact issue as to whether the behavior action plan was imposed for safety reasons or as a disciplinary measure. The court found that prison psychologists were not deliberately indifferent to the serious medical needs of the inmate when they placed the inmate on the behavior action plan, where the psychologists repeatedly visited the inmate, regularly adjusted the inmate's access to property that he could use to harm himself, and repeatedly placed the inmate on observation status to ensure his safety when he was suicidal. (Green Bay Correctional Institution, Wisconsin)

U.S. Appeals Court
FAILURE TO PROTECT

Walls v. Tadmán, 762 F.3d 778 (8th Cir. 2014). A prisoner sued prison officials, claiming that they violated his Eighth Amendment right against infliction of cruel and unusual punishment when they failed to protect him from attacks by other prisoners. Following a bench trial, the district court entered judgment for the officials. The prisoner appealed. The appeals court affirmed, finding that the officials did not respond unreasonably to any substantial risk of harm to the prisoner. According to the court, assuming that the prisoner faced a substantial risk of harm from being labeled a "snitch" and that prison officials were aware of that risk, the officials offered the prisoner protective custody after the first alleged attack. He declined the offer, he asked to be returned to the general population when prison officials placed him in protective custody anyway, he declined to report an enemy situation with the alleged attacker, both the prisoner and the alleged attacker told officials that they expected no further problems, and at no point did the prisoner ask for protection. (Iowa State Penitentiary)

U.S. District Court
SLEEP
NOISE

Williams v. Klien, 20 F.Supp.3d 1171 (D.Colo. 2014). A federal inmate brought a Bivens action against various prison officials, alleging a due process violation and First Amendment retaliation, as related to his complaints about sleep deprivation and penalties that followed his complaints. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated a Bivens claim against a prison official, alleging First Amendment retaliation and seeking declaratory and injunctive relief, and the prison official was not entitled to qualified immunity on the inmate's First Amendment retaliation claim seeking declaratory and injunctive relief. The inmate alleged that the prison official expressed his disdain for the inmate and his various grievances, and then arranged for continued adverse actions to be taken against the inmate, as required for the inmate to state a Bivens claim for declaratory or injunctive relief. The inmate alleged that during a one year period, he was awakened each night while he was sleeping, as officers were conducting count they would beat on his cell door, and that these actions were taken to deprive him of adequate sleep. According to the court, the inmate's allegations indicated that he sought to exercise his First Amendment rights by filing grievances, that the official was aware of the inmate's attempt to file grievances, that, based on that awareness, the official took

action to impose adverse consequence on the inmate, and that the consequence would deter a person of ordinary firmness from engaging in a constitutionally-protected activity. (Fed. Correctional Institution, Florence, Colorado)

U.S. District Court
TEMPERATURE
MEDICAL CARE
PRETRIAL DETAINEES

Woodson v. City of Richmond, Va., 2 F.Supp.3d 804 (E.D.Va. 2014). A detainee in a city jail filed a § 1983 action against the city, the sheriff, and deputies, claiming constitutional and state law violations arising from the detainee's heat stroke allegedly caused by deliberate indifference to his need for medical care. The detainee was housed on the top floor of the jail during a time when outside temperatures exceeded 100 degrees, and when interior temperatures were even higher. The inmate suffered a heat stroke and was found unresponsive in his cell, and he had a body temperature of 106.1 degrees. The sheriff cross-claimed against the city for indemnification or contribution. The city moved to dismiss the cross-claim. The court dismissed the cross-claim, finding that the sheriff lacked the right to contribution and the right to indemnification for § 1983 claims or state law claims. (Richmond City Jail, Virginia)

2015

U.S. District Court
VENTILATION
SANITATION
LIGHTING

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

U.S. Appeals Court
MATTRESS
MEDICAL CARE

Burton v. Downey, 805 F.3d 776 (7th Cir. 2015). A pretrial detainee brought a § 1983 action against a county, county jail, county sheriff, non-medical correctional officials, physician's assistants, and nurses, asserting due process violations based on deliberate indifference to his serious medical needs, relating to hip and elbow pain, a rash, and rectal bleeding. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court reversed and remanded. The court held that an alleged two-day delay in providing non-narcotic pain medication to the detainee was not deliberate indifference, failure to honor the detainee's preference for narcotic pain medication was not deliberate indifference, the detainee did not offer objective evidence of a serious medical need for narcotic pain medication, and failure to provide outside physical therapy was not deliberate indifference. The court noted that an orthopedic surgeon who had treated the detainee before his detention recommended to staff that the detainee receive in-cell therapy using a towel. The court held that failure of county jail staff to provide the detainee, who suffered from hip pain, with a second mattress, did not constitute cruel and unusual punishment with respect to conditions of confinement, in the absence of evidence that a second mattress was essential medical care. (Jerome Combs Detention Center, Kankakee County, Illinois)

U.S. District Court
BEDDING
FLOOR-SLEEPING
CROWDING
SANITATION
TEMPERATURE

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

U.S. Appeals Court
EXERCISE
CLOTHING
TEMPERATURE

Diaz v. Davidson, 799 F.3d 722 (7th Cir. 2015). A former state inmate filed an action alleging that prison officials' denial of adequate exercise violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court entered judgment in the officials' favor and the inmate appealed. The appeals court affirmed. The court held that the officials' failure to provide the inmate with a hat and gloves to wear when he exercised in his outdoor cell did not violate the Eighth Amendment. The court held that state prison officials' failure to provide the inmate a with hat and gloves to wear when he exercised in his outdoor cell in a prison yard in very cold winter

weather did not constitute cruel and unusual punishment, in violation of the Eighth Amendment, even though the inmate was unable to do the chin-ups he needed to prevent the muscles in his back from atrophying because of arthritis, and the indoor cell was not large enough. The court noted that guards gave him what they were required to give him according to the prison's policy without realizing, or being irresponsible in failing to realize, that he needed gloves and a hat to do specific exercises. According to the court, the warden received only one pertinent grievance, which complained that on one occasion the inmate had been left outdoors without a hat and gloves for two hours. (Pontiac State Prison, Illinois)

U.S. District Court
PRETRIAL DETAINEES
SANITATION
HYGIENE
FLOOR-SLEEPING
CLOTHING
SHOWERS

Fant v. City of Ferguson, 107 F.Supp.3d 1016 (E.D. Mo. 2015). City residents brought a class action lawsuit against a city, asserting claims under § 1983 for violations of Fourth, Sixth, and Fourteenth Amendments based on allegations that they were repeatedly jailed by the city for being unable to pay fines owed from traffic tickets and other minor offenses. The residents alleged that pre-appearance detentions lasting days, weeks, and in one case, nearly two months, in allegedly poor conditions, based on alleged violations of a municipal code that did not warrant incarceration in the first instance, and which were alleged to have continued until an arbitrarily determined payment was made, violated their Due Process rights. The residents alleged that they were forced to sleep on the floor in dirty cells with blood, mucus, and feces, were denied basic hygiene and feminine hygiene products, were denied access to a shower, laundry, and clean undergarments for several days at a time, were denied medications, and were provided little or inadequate food and water. The plaintiffs sought a declaration that the city's policies and practices violated their constitutional rights, and sought a permanent injunction preventing the city from enforcing the policies and practices. The city moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) allegations that residents were jailed for failure to pay fines without inquiry into their ability to pay and without any consideration of alternative measures of punishment were sufficient to state a claim that the city violated the residents' Due Process and Equal Protection rights; (2) the residents plausibly stated a claim that the city's failure to appoint counsel violated their Due Process rights; (3) allegations of pre-appearance detentions plausibly 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
LIGHTING

Greening v. Stout, 144 F.Supp.3d 1241 (E.D. Wash. 2015). A state prisoner commenced a § 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
RACIAL DISCRIMINATION
CLASSIFICATION

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

U.S. Appeals Court
TEMPERATURE
VENTILATION
MEDICAL CARE

Hinojosa v. Livingston, 807 F.3d 657 (5th Cir. 2015). The mother of an inmate who died of complications from heatstroke while incarcerated brought an action against prison officials and employees, the Texas Department of Criminal Justice (TDCJ), the University of Texas Medical Branch (UTMB), and an official of UTMB, alleging that they were responsible for her son's death. Prison officials moved to dismiss on the basis of qualified immunity. The district court deferred ruling and the officials appealed. The appeals court dismissed the action, finding that it did not have jurisdiction over the appeal. The court held that the inmate's factual allegations, if true, would be sufficient to establish prison officials' liability for an Eighth Amendment violation and to overcome a qualified immunity defense, and that further clarification of the facts was necessary for the district court to rule on the prison officials' qualified immunity defense. The mother of the inmate alleged that officials subjected the inmate to dangerous heat conditions in conscious disregard of the serious risk that the heat posed for prisoners who, like the inmate, suffered from certain medical conditions, took certain medications, and had recently been transferred from air-conditioned jails to non-climate-controlled facilities. The mother alleged that the officials had promulgated and had power to change policies that allegedly caused the inmate's death, and the Eighth Amendment right not to be subjected to extremely dangerous temperatures without adequate ameliorative measures had been clearly established at the time of inmate's death. (Garza West Unit, Texas Department of Criminal Justice)

U.S. District Court
CELLS
DORMITORIES
PROGRAMS
ISOLATION

Hughes v. Judd, 108 F.Supp.3d 1167 (M.D. Fla. 2015). Several juveniles, as representatives of other juveniles similarly situated, brought a § 1983 action asserting that the sheriff of a Florida county and the health care provider retained by the sheriff violated the juveniles' rights under the Fourteenth Amendment during the juveniles' detention at the county jail. The district court held that the plaintiffs failed to prove that either the sheriff or the health care provider was deliberately indifferent to any substantial risk of serious harm during the juveniles' detention, or that their policies or customs effected any other constitutional violation. According to the court, at most, the juveniles showed only that two persons, each of whom was qualified to testify as an expert, disfavored some of the sheriff's past or present managerial policies and practices and advocated the adoption of others they felt were superior for one reason or another.

The court found that the juvenile detainees' challenges to particular conditions of confinement at the jail were mooted by changes, which included elimination of a "holding cage," elimination of the holding area for even temporary suicide watches, installation of cameras in each sleeping cell with monitors posted above each dorm, updating of the physical facility, relocation of the classrooms, a 48-hour review for juveniles in isolation, and installation of a radio frequency identification (RFID) system.

The court found that the use of pepper spray against the juvenile detainees at the county jail did not violate the Eighth Amendment, where pepper spray was effective for quickly stopping a fight without inflicting injury, nearly every use of pepper spray at that jail was to stop a fight, and there was no evidence that the pepper spray had lasting, negative effect. (Polk County Central Jail, Florida, and Corizon Health, Inc.)

U.S. Appeals Court
SEGREGATION
OUT OF CELL TIME
CELLS
IDLENESS

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 years 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. Appeals Court
CELLS
EXERCISE
DEATH PENALTY
VISITATION

Prieto v. Clarke, 780 F.3d 245 (4th Cir. 2015). A state prisoner convicted of capital murder and sentenced to death brought a pro se § 1983 action, alleging that his confinement on death row, pursuant to a state policy which required him to be in a single cell with minimal visitation and recreation opportunities, violated his procedural due process and Eighth Amendment rights. The district court dismissed the Eighth Amendment claim, and subsequently granted summary judgment in favor of the prisoner on the due process claim. Prison officials appealed. The appeals court reversed, finding that the prisoner had no due process liberty interest in avoiding confinement on death row. (Sussex I State Prison, Virginia)

U.S. District Court
OUT OF CELL TIME
MEDICAL CARE
FOOD
HYGIENE
PRETRIAL DETAINEES
USE OF FORCE

Shorter v. Baca, 101 F.Supp.3d 876 (C.D. Cal. 2015). A pretrial detainee brought an action against a county, sheriff, and deputies, alleging under § 1983 that the defendants denied her medical care, subjected her to unsanitary living conditions, deprived her of food, clean clothes, and access to exercise, and conducted overly invasive searches. The detainee had been classified as mentally ill and housed in a mental health unit at the detention facility. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to what policies governed classification of pretrial detainees who were mentally ill. The court found that summary judgment was precluded by a genuine issue of material fact as to whether jail conditions imposed on the detainee, including permitting the detainee, who was incarcerated for 32 days, to shower only three times, only permitting the detainee outside of her cell for recreation on one occasion, failing to clean her cell, failing to provide the detainee with clean clothing, and depriving the detainee of food, amounted to punishment. The court found that there was no evidence that county jail employees' alleged failure to adequately treat the detainee's blood condition caused her measurable harm, where there was no indication that the alleged denial of treatment caused the detainee any physical pain, or that any mental anguish the detainee suffered was related to denial of her medication. The court denied summary judgment to the defendants on the detainee's claim that she was denied dental treatment. (Century Regional Detention Facility, Los Angeles County, California)

U.S. Appeals Court
SANITATION
MEDICAL CARE

Turner v. Mull, 784 F.3d 485 (8th Cir. 2015). A state inmate filed a § 1983 action alleging that correctional officials violated his rights under the Eighth Amendment, Fourteenth Amendment, Title II of the Americans with Disabilities Act (ADA), and Rehabilitation Act by failing to transport him in wheelchair-accessible van, exposing him to unsanitary conditions in the van, and retaliating against him for filing a complaint. The district court entered summary judgment in the officials' favor and the inmate appealed. The appeals court affirmed. The appeals court held that the officials were not deliberately indifferent to the inmate's serious medical needs when they precluded him from using a wheelchair-accessible van, even if the inmate was required to crawl into the van and to his seat. The court noted that the inmate was able to ambulate, stand, and sit with the use of leg braces and crutches, the inmate did not ask to use a readily available wheelchair, no physician ordered or issued a wheelchair for the inmate, and improperly using or standing on a lift was considered dangerous due to the possibility of a fall.

According to the court, officials were not deliberately indifferent to the serious medical needs of the inmate in violation of Eighth Amendment when they required him to be transported and to crawl in an unsanitary van, where

the inmate was exposed to unsanitary conditions on a single day for a combined maximum of approximately six hours. (Eastern Reception Diagnostic Correctional Center, Missouri)

U.S. District Court
JUVENILES
CELLS
ISOLATION
OUT OF CELL TIME

Turner v. Palmer, 84 F.Supp.3d 880 (S.D.Iowa 2015). A 16-year-old who had been adjudicated delinquent and who had prior psychiatric hospitalizations, brought an action against the operators of a state-run juvenile home under § 1983 for violations of her due process rights under the Fifth, Eighth, and Fourteenth Amendments, based on the alleged systematic and excessive use of cement-walled isolation cells. The defendants moved to dismiss. The district court denied the motion, finding that the juvenile stated a claim for due process violations and alleged a continuing violation. The facility had several small cement isolation cells, labeled Quiet Rooms, Safety Rooms, Comfort Rooms, and the Special Unit. The prisoner alleged that she spent numerous consecutive weeks locked in isolation cells, spending 289 out of the 528 days she was at the facility in isolation. She claimed she was only given one thin mat to sleep on, was only permitted to exit the cell to use the restroom; and during many of these stays, she was not allowed any homework, classroom instruction, reading material, or outside communication. (Iowa Juvenile Home, Toledo, Iowa)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE

Whitley 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
ODORS
CELLS
SANTITATION
FOOD

Willey v. Kirkpatrick, 801 F.3d 51 (2d Cir. 2015). A state prisoner brought an action under § 1983 against a prison superintendent, a corrections sergeant, and corrections officers, alleging unsanitary conditions, theft of legal documents, harassment, malicious prosecution, and false imprisonment. The district court granted summary judgment to the defendants. The prisoner appealed. The appeals court vacated the district court's decision and remanded the case for further proceedings. The court held that remand was required for the district court to address issue in first instance of whether the prisoner had a right under the First, Fifth, Eighth, or Fourteenth Amendments to refuse to provide false information to a corrections officer. The court held that the prisoner stated a claim of unsanitary conditions of confinement against the defendants by alleging that while being kept naked, he had been exposed, at a minimum, to seven days of human waste in a shielded cell that would have "exponentially amplified the grotesquerie of odor" of the accumulating waste, which resulted in mental-health problems and attempted suicide. The court held that the prisoner adequately pleaded an Eighth Amendment claim against prison officials by alleging that his restricted diet was unusually unhealthy, where his diet consisted of bread that was usually stale and cabbage that usually was rotten. According to the court, whether state prisoner's psychological pain and resulting suicide attempt constituted an "appreciable injury" that made the various forms of harassment he allegedly suffered actionable, on remand of the prisoner's Eighth Amendment claim of harassment and abuse without physical injury. (Wende Correctional Facility, New York)

U.S. District Court
TEMPERATURE
MEDICAL CARE

Woodson v. City of Richmond, Virginia, 88 F.Supp.3d 551 (E.D.Va. 2015). A city jail inmate brought an action against city, sheriff, and deputies, alleging deliberate indifference to the inmate's medical needs during a severe heat wave. The sheriff moved for summary judgment. The district court held that summary judgment was precluded by genuine issues of material fact as: (1) whether the sheriff instituted a policy of confining inmates with medical issues to their cells during mealtime, denying the inmates access to air conditioning in the dining hall; (2) whether the sheriff's decisions to keep inmates confined would qualify as a policy; (3) whether the sheriff was subjectively aware that conditions at the jail posed a substantial risk of harm to inmates; (4) whether the sheriff was subjectively aware that his response to the risks posed to inmates by excessive heat was inadequate; (5) whether the sheriff's policy caused the inmate's injuries; (6) whether the sheriff's alleged failure to investigate two instances of heat-related deaths at the jail, was not persistent and widespread; and (7) whether the sheriff had at least a constructive knowledge of his deputies' alleged failure to perform required 30-minute security checks at a flagrant and widespread level. (Richmond City Jail, Virginia)

2016

U.S. District Court
ISOLATION
MEDICAL CARE
EXERCISE

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 10: CRUEL AND UNUSUAL PUNISHMENT

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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.

1962

U.S. District Court
ISOLATION

Fulwood v. Clemmer, 206 F.Supp. 370 (D. D.C. 1962). Isolation in solitary confinement for two years constitutes cruel and unusual punishment because the only violation of prison rules was relatively minor. (District of Columbia Jail)

1970

U.S. District Court
ISOLATION

Davis v. Lindsay, 321 F.Supp. 1134 (S.D. N.Y. 1970). Incarceration in isolation and under certain circumstance violates the eighth amendment. (City Jail, New York)

U.S. District Court
TRUSTIES
ISOLATION
LABOR

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 trustees 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 the 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 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.

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 trustees had unsupervised power over other inmates was essential to the establishment of prison system meeting constitutional standards. (Arkansas Prison System)

1971

U.S. District Court
PRETRIAL
DETAINEES

Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971). Detainees may not be subjected to any punishment, "cruel and unusual" or not. The only legitimate purpose served by pretrial detention is assuring defendants' presence at trial. Minimally, a detainee ought to have the reasonable expectation that he would survive his period of detainment with his life; that he would not be assaulted, abused, or molested during

his detainment; and that his physical and mental health would be reasonably protected during this period. Conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of assuring appearance at trial. One female staff member must be on duty twenty-four hours a day. There should be one staff member patrolling on each cell floor in the immediate area of every detainee on a twenty-four hour basis. (Pulaski County Jail, Arkansas)

U.S. District Court
EXERCISE

Sinclair v. Henderson, 441 F.Supp. 1123 (E.D. La. 1971). Confinement for long periods of time without the opportunity for regular outdoor exercise violates the eighth amendment. (Louisiana State Penitentiary)

1972

U.S. District Court
SECURITY
JUVENILES

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

U.S. District Court
STATE STATUTES

Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Where conditions of confinement do not meet the minimum requirements of state statutes, the court need not reach the subjective criteria of cruel and unusual punishment. (Dallas County Jail, Texas)

1973

U.S. Appeals Court
ISOLATION

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
FOOD

Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Low quality and temperature of food service contributes to a finding of cruel and unusual punishment. (St. Louis County Jail, Missouri)

1975

U.S. District Court
DISCIPLINE
MEDICAL CARE

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
REMEDIES

Miller v. Carson, 401 F.Supp. 835 (M.D. Fla. 1975), aff'd, 563 F.2d 741 (5th Cir. 1977). Where it can be shown that prison conditions are so bad as to constitute cruel and unusual punishment, the relief to be afforded may properly include an order compelling the provision of basic rehabilitative services and facilities. (Duval County Jail, Florida)

1976

U.S. Supreme Court
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.

CAVEAT: "This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the eighth

amendment. An accident, although it may produce added anguish, is not on that basis alone to be characterized as wanton infliction of unnecessary pain.... Similarly, in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.' Thus a complaint stating that a physician has been negligent in dispersing or treating a medical condition does not state a valid claim of medical mistreatment under the eighth amendment. Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." 429 U.S. at 105-106.

GENERAL RATIONALE: "An inmate must rely on prison authorities to treat his medical needs; if the authorities fail to do so, his needs will not be met. In the worst cases, such a failure may actually produce 'physical torture or a lingering death'... In less severe cases, denial of needed care may result in pain and suffering which no one suggests would serve any penological purpose.... The infliction of such unnecessary suffering is inconsistent with contemporary standards of decency as manifested in modern legislation [both statutory and model correctional standards] codifying the common-law view that 'it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.'" 424 U.S. at 103-104. (Texas Department of Corrections)

U.S. Appeals Court
PRETRIAL
DETAINEES

Hampton v. Holmesburg Prison Officials, 546 F.2d 1077 (3rd Cir. 1976). Protection of detainees is founded in due process and equal protection clauses, not the eighth amendment or the presumption of innocence. (Holmesburg Federal Penitentiary, Pennsylvania)

U.S. Appeals Court
MEDICAL CARE

Harris v. Chancellor, 537 F.2d 203 (5th Cir. 1976). A warden's deliberate indifference to an inmate's severe and obvious injuries is tantamount to an intentional infliction of cruel and unusual punishment. (Glynn County Jail, Georgia)

U.S. District Court
JUVENILES
VIOLENCE

Rodriguez v. Jiminez, 409 F.Supp. 582 (D. P.R. 1976). Confinement in jail where violence and terror reigns violates rights secured by fourteenth and eighth amendments. Confinement of juvenile offenders to an institution where unconstitutional conditions exist constitutes cruel and unusual punishment. Placing one copy of the prison regulations in the library does not meet due process requirement of informing inmates of institutional rules. (San Juan District Jail)

U.S. District Court
RESTRAINTS

Tate v. Kassulke, 409 F.Supp. 651 (W.D. Ky. 1976). Chaining a mentally disturbed inmate to a bed for any protracted length of time would be cruel and unusual punishment. (Jefferson County Jail, Kentucky)

1977

U.S. District Court
MEDICAL CARE

Todaro v. Ward, 431 F.Supp. 1129 (S.D. N.Y. 1977), aff'd, 652 F.2d 54 (1981). The federal district court found the medical system to violate the cruel and unusual punishment clause of the eighth amendment because it constitutes "deliberate indifference" to the inmates' needs. (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
MEDICAL CARE

Vinnedge v. Gibbs, 550 F.2d 926 (4th Cir. 1977). Willful denial of medical treatment may constitute cruel and unusual punishment. (Fairfax County Jail, Virginia)

1978

U.S. District Court
SANITATION
CROWDING

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

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

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

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

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

The Missouri State Penitentiary is overcrowded but, because it has so much acreage within the walls, because of the many and varied activities available to inmates, and because of the relative freedom enjoyed by inmates to utilize recreational areas and the many activities available to them, the penitentiary, viewed as a whole, is not now so overcrowded as to be intolerable, inhumane, totally unreasonable in light of the modern conscience, or shocking to the conscience of the court.

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

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

U.S. District Court
CROWDING
PROTECTIVE
CUSTODY

M.C.I. Concord Advisory Bd. v. Hall, 447 F.Supp. 398 (D. Mass, 1978). In a civil rights action brought to challenge conditions of confinement at a state correctional institution, the district court held that: (1) plaintiff prisoners sustained the burden of proving that incarceration of inmates in protective custody cells, in awaiting action cells and in institutional holding cells violated eighth amendment standards, but (2) plaintiffs failed to sustain their burden of proving that double ceiling in one area and use of a hospital wardroom for a dormitory violated eighth amendment standards. Injunctive relief was granted in part.

An eighth amendment proscription against cruel and unusual punishment is flexible, drawing its meaning from evolving standards of decency that mark the progress of maturing society, and penal measures are to be evaluated against broad and idealistic concepts of dignity, civilized standards, humanity and decency.

An equal protection challenge to a policy under which inmates undergoing classification and placement at state institutions were single-celled in contrast to double ceiling 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.)

1979

U.S. Appeals Court
MEDICAL CARE

Fielder v. Bosshard, 590 F.2d 105 (5th Cir. 1979). Jury awarded \$99,000 damages against jailer and sheriff for death of county jail prisoner. The deceased prisoner was arrested and jailed for nonsupport. Although informed of the prisoner's need for medication jail officials did not respond to his repeated requests. The jury found the officials were callously indifferent to the prisoner's known medical needs. (Williamson County Jail, Texas)

U.S. District Court
MEDICAL CARE
COMMISSARY

Jefferson v. Douglas 493 F.Supp. 13 (W.D. Okla. 1979). According to the U.S. District Court for the Western District of Oklahoma, prison officials' cancellation of an inmate's canteen privileges in order to insure that he remain within the bounds of a prescribed diabetic diet does not amount to cruel and unusual punishment. Halton Jefferson, an inmate at the Lexington, Oklahoma Assignment and Reception Center (LARC) filed a pro-se action under Section 1983 alleging that the decision of prison officials to refuse him canteen privileges amounted to cruel and unusual punishment. Jefferson, a diabetic, cited medical journals which suggested that a diabetic should always carry sugar items to prevent the occurrence of a diabetic coma. Since he was restricted to nonsugar diet, Jefferson contended the canteen was the only source from which he could obtain sugar items to protect himself against a coma. A report, ordered by the trial judge in Jefferson's suit, revealed a different aspect of the matter. LARC, recognizing that Jefferson was a diabetic, had prepared a special diet for him, limiting his caloric intake to 1800 calories per day. Later, this figure was reduced to 1500 calories.

Nevertheless, Jefferson continued to gain weight. Canteen records and verbal reports showed that Jefferson made a habit of eating such items as ice cream, bread, peanut butter and jelly sandwiches, sweet rolls, Fritos, Cheetos, soda pop (sugared) and candy. The report termed Jefferson's conduct a "deliberate effort to violate the special diet ordered for him." Presented with these facts, the court noted that the decision of the LARC officials to eliminate Jefferson's canteen privileges was the type of administrative decision with which court should not interfere. Moreover, the court stated that the action falls far short of shocking the conscience, a showing which is essential to demonstrate cruel and unusual punishment. As a result of these findings, the court thus dismissed the inmate's complaint. (Assignment and Reception Center, Lexington, Oklahoma)

U.S. District Court
MEDICAL CARE

Maynard v. Kear, 474 F.Supp. 794 (N.D. Oh. 1979). Failure of police to take an inmate suffering from "slight bleeding" to a physician or hospital is not sufficient to claim a violation of the eighth amendment where no permanent injury results. (City of North Olmsted, Ohio)

1980

U.S. Supreme Court
MEDICAL CARE

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

The Seventh Circuit Court of Appeals agreed with the district court, but held that Section 1331 (a.) was satisfied because whenever a state survivorship statute would preclude a Bivens action, the federal common law allows survival of the action.

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

(Federal Correctional Center, Indiana)

U.S. District Court
SANITATION
FIRE SAFETY
LIGHTS
NOISE
VENTILATION
EXERCISE

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

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

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

An entirely inadequate ventilation system at the county jail constituted a constitutionally intolerable living condition.

Deficiencies in the county jail, including lack of fire escapes, absence of windows, lack of necessary fire doors, and limited number of fire extinguishers amounted to constitutionally intolerable conditions.

Failure of county jail authorities to provide each inmate one hour per day of exercise outside cells was a constitutionally intolerable condition. (Clay County Jail, Missouri)

U.S. District Court
USE OF
FORCE

Santiago v. Yarde, 487 F.Supp. 52 (S.D. N.Y. 1980). The allegation of the use of force to remove the plaintiff from the cell does not shock the conscience since the force used was apparently not excessive. Therefore, the use of force does not constitute a cruel and unusual punishment. (Bronx House of Detention, New York)

1981

U.S. Appeals Court
MEDICAL CARE
CELLS
BEDDING

Chavis v. Rowe, 643 F.2d 1281 (7th Cir. 1981). Reversing a dismissal granted by a federal district court, the United States Court of Appeals for the Seventh Circuit held that the failure of a disciplinary review board to provide an inmate with exculpatory evidence relating to the charges against him amounted to an actionable violation of his right to due process. The court also ruled that the inmate's allegations of the conditions to which he was exposed during six months in segregation raised a valid claim of cruel and unusual punishment.

The court stated that the inmate's eighth amendment claims of cruel and unusual punishment arising from his confinement in segregation should not have been dismissed, even though he did not specifically allege bad faith in his complaint. The inmate made the following allegations, which if proven would amount to cruel and unusual punishment: confinement in a 5x7 foot cell with four other residents; inadequate bedding, light, toilet facilities, and showers; insufficient access to legal materials, medical and dental care and food.

The court thus reversed the district court's order of dismissal and reinstated the case. (Statesville Correctional Center, Joliet, Illinois)

U.S. District Court
CROWDING

Hendrix v. Faulkner, 525 F.Supp. 435 (N.D. Ind. 1981), cert. denied, 104 S.Ct. 3587 (1983), aff'd, 715 F.2d 269. The conditions of overcrowding at the Indiana State Prison constitute a violation of the eighth amendment in light of the physical plant and limits on staffing. Therefore, prison officials were required to take immediate action to ameliorate the conditions. Contributing to the limited time out of the cell is a sheer number of inmates. There was testimony that some inmates had not had outside recreation in five months. However, other conditions at the prison did not rise to the level of constitutional violations. (Indiana State Prison)

U.S. Appeals Court
TOTALITY OF
CONDITIONS

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. (Jackson County Jail, Pascagoula, Mississippi)

U.S. Appeals Court
PRETRIAL
DETAINEES
CROWDING
DOUBLE CELLING

Lareau v. Manson, 651 F.2d 96 (2nd Cir. 1981). Adopting most of the findings of the district court, the United States of Appeals for the Second Circuit has ordered major reforms in the Hartford Community Correctional Center (HCCC), dealing generally with overcrowding. The constitutional standard for the legality of conditions of confinement is different for pretrial detainees and for convicted inmates. For pretrial detainees, the test is whether the conditions amount to punishment without due process in violation of the fourteenth amendment. With respect to convicted inmates, the criterion is whether the punishment is cruel and unusual as defined under the eighth amendment.

Reviewing the numerous findings of the district court, the appellate court looked to the supreme court case of Bell v. Wolfish, 441 U.S. 520. Viewing overcrowding at the HCCC as related to pretrial detainees, the court cited the following standard of whether such conditions amount to punishment: "It must be shown that the overcrowding subjects a detainee over an extended period to genuine privation and hardship not reasonably related to a legitimate governmental objective."

Based upon this standard the court found that double-bunking in cells originally designed for one person, compounded by overcrowded dayrooms, imposed unconstitutional punishment on pretrial detainees in all cases except where such hardship was related to a legitimate governmental purpose. The court here found that these hardships promoted neither security nor the effective management of the institution.

Other conditions were even less acceptable. The use of a glass enclosed dayroom (dubbed the "fish tank") as a dormitory room housing numerous inmates on a full time basis was held to amount to punishment and was thus unconstitutional with regard to pretrial detainees. In addition, the placing of mattresses on the floors of cells to accommodate more inmates and the assignment of healthy inmates to medical cells (sometimes with mentally or physically ill cellmates) to alleviate overcrowding were held to constitute impermissible punishment.

The court further stated that the length of incarceration of pretrial detainees becomes relevant in such determination: "Conditions unacceptable for weeks or months might be tolerable for a few days." As such, the court indicated that while double-bunking and overloaded dayrooms might be tolerable, and thus constitutionally permissible for a few days, after 15 or so days, they would become unacceptable punishment. The use of the "fish tank" and floor mattresses, however, were held to constitute punishment regardless of the number of days imposed.

Viewing the conditions as they related to convicted persons, the court pointed out that it was to be guided by a wholly different standard. Here, in order to constitute a constitutional violation, the conditions had to be such as to amount to cruel and unusual punishment. Nevertheless, the court found the overcrowded conditions intolerable. Noting that the thirty to thirty-five square feet of living space per inmate fell far short of the standards promulgated by groups such as the Connecticut Department of Corrections, the American Correctional Association, the United Nations and the National Sheriffs' Association, and further noting that the dayroom at the HCCC offered the "relief of a noisy subway platform" the court held that double-bunking, with respect to convicted inmates, was unconstitutional except where inmates are confined no more than about thirty days.

As with the pretrial detainees, the court found that the constitutional rights of the convicted inmates were immediately violated by confinement in the "fish tank" and by policies requiring them to sleep on mattresses on the floors and to be assigned to medical holding cells for no reason other than to alleviate overcrowding.

Finally, the court ordered that all newly admitted inmates, with minor exceptions, be given a medical examination within forty-eight hours of admission. (Hartford Community Correctional Center, Connecticut)

U.S. District Court
ISOLATION
BEDDING
TOILETS

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. Appeals Court
FOOD

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

U.S. Supreme Court
DOUBLE CELLING
SANITATION
SAFETY
STAFFING

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

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

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

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

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

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

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

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

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

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

1982

U.S. Appeals Court FOOD

Cunningham v. Jones, 667 F.2d 565 (6th Cir. 1982). A prisoner's eighth amendment rights are not violated when he is served only one meal a day for fifteen consecutive days. The one meal furnished a day was sufficient to maintain normal health for the fifteen days involved. The jail cook testified and estimated the caloric contents of the noon meals at between 2,000 and 2,500 calories. (McCracken County Jail, Kentucky)

U.S. Appeals Court DOUBLE CELLING

Glynn v. Auger, 678 F.2d 760 (8th Cir. 1982). Double-celling is not cruel and unusual punishment. The eighth Circuit Court of Appeals held that the double-celling of an Iowa Men's Reformatory (IMR) prisoner did not violate the ex post facto clause. The court also found that the policy did not constitute cruel and unusual punishment.

After reaching the highest level of a prison incentive program, the prisoner was housed in a single cell in a remodeled housing unit of the prison. Due to an increase in the number of inmates, officials began double-celling a portion of the building. When the plaintiff objected to this procedure, he was given the choices of being double-celled, being single-celled in a smaller cell with no loss of privileges or being placed in a lower level cell with reduced privileges.

The inmate brought suit contending that the double-celling was an ex post facto increase in his punishment; the district court disagreed, also finding that the action was not a punishment. The inmate then appealed.

The Circuit Court agreed with the lower court, stating: "The constitutional prohibition against ex post facto law was designed to secure substantial personal rights against arbitrary and oppressive legislative action, and not to obstruct mere alteration in conditions deemed necessary for the orderly infliction of humane punishment." Malloy v. South Carolina, 237 U.S. 180, 35 S.Ct. 507 (1915).

The appeals court also found that the double-celling did not constitute cruel and unusual punishment. (Iowa Men's Reformatory)

U.S. District Court VIOLENCE

Grubbs v. Bradley, 552 F.Supp. 1052 (M.D. Tenn. 1982). A classification system may be required. While there is no constitutional right to a classification system, where the absence of such a system substantially contributes to violence in the institution, such a system may be required. Here, the court notes that the classification system is virtually meaningless since cell and work and even institutional assignments are not

really made on the basis of other than available space. The court finds that inmates do not have a right to participate in the classification decision since that is a matter of administrative discretion.

Prisoners brought a class action suit against the conditions of confinement in certain Tennessee adult prison facilities, alleging unconstitutional conditions. The district court held certain conditions and practices amounted to cruel and unusual punishment. Inmates have no constitutional claim to any particular security classification, but if proof shows a sufficient connection between an improper classification system and the violation of a constitutionally protected right, such as the right to be free from excessive violence, there may be just cause for court intervention.
(Tennessee Correctional System)

U.S. Appeals Court
TOTALITY OF
CONDITIONS
LIGHTING
PLUMBING
FIRE SAFETY
SANITATION
VENTILATION

Hoptowit v. Ray, 682 F.2d 1237 (9th Cir. 1982). Eighth amendment violations cannot be based on "totality of conditions." In an opinion discussing the Washington State Penitentiary, the Ninth Circuit Court of Appeals held that certain conditions in the facility are unconstitutional. The court held that an eighth amendment violation may not be based solely on a combination of conditions, if none of the conditions would be unconstitutional if viewed alone.

The lower court had found that lighting was substandard, plumbing was unsatisfactory, fire prevention was substandard, food service did not meet public health standards, that there was evidence of vermin infestation, and that ventilation was inadequate. The court of appeals accepted these findings, but noted that none of these conditions standing alone would be unconstitutional, thus reversing the lower court's order to improve those conditions. The court of appeals did find that the level of violence was unconstitutional, and that the medical care did not meet constitutional standards, but rejected the district court's remedies. (Washington State Penitentiary)

U.S. District Court
TOILETS

Lyons v. Papantoniou, 558 F.Supp. 4 (E.D. Tenn. 1982), *aff'd*, 705 F.2d 455 (6th Cir. 1982). Transfer from one county jail to another does not violate constitutional rights. Since the federal constitution did not secure the right of an inmate to be confined in any particular jail, the federal district court did not have reason to review the transfer. The inmate's temporary twenty-four hour confinement in the latter jail in a cell lacking adequate bathroom facilities and cigarettes did not amount to cruel and unusual punishment. (Carter County Jail, Tennessee)

U.S. Appeals Court
PRIVACY

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

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

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

U.S. District Court
ISOLATION
PLUMBING
TOILETS
EXERCISE
BEDDING
FOOD
DEFENSES

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

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

In discussing the lack of plumbing facilities, the court found that conditions of the isolation cell violated minimum state standards, which did not establish a constitutional

violation per se, but lack of adequate plumbing facilities has previously been held to a violation of the eighth amendment.

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

U.S. District Court
VIOLENCE

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

1983

U.S. Appeals Court
ISOLATION

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)

U.S. Appeals Court
EXERCISE

Wilkerson v. Maggio, 703 F.2d 909 (5th Cir. 1983). Inmate's conduct justifies keeping him in maximum security. It was not unreasonable or arbitrary to consider an inmate a security risk since his past prison conduct had warranted the Reclassification Board's decision to keep him in maximum security, the Fifth Circuit Court of Appeals has ruled. The inmate's record showed that the inmate had participated in riots, that he attacked and assaulted correctional officers, and that he was convicted for the murder of another inmate.

Although the inmate was not permitted any outdoor exercise for five years, he was allowed daily, one hour exercise outside his cell in any manner he desired. As such, no violation of the eighth amendment's prohibition against cruel and unusual punishment had occurred. (State Penitentiary, Angola, Louisiana)

U.S. District Court
DOUBLE CELLING
CROWDING
CELLS

Dohner v. McCarthy, 635 F.Supp. 408 (C.D.Cal. 1985). Inmates brought a class action suit against the director of California Department of Corrections and the prison superintendent to challenge the constitutionality of conditions of confinement, and some inmates moved for certification of subclasses. The district court held that: (1) conditions for certification of subclasses were not satisfied; (2) double-celling, overcrowding, medical care, sanitation, food, clothing, and safety did not violate the eighth amendment; and (3) no alleged liberty interest in medical and mental health treatment, entitlement to work credits, or visitation rights was violated.

Cells housing two inmates, despite the design for one inmate which contained about eleven and one-half square feet per person when the extra bed was lowered, which required the inmates to crawl over beds to travel from one end of the cell to the other, but which were adequately cleaned and ventilated, which had windows, which had a desk and storage area, and which had noise within tolerable levels were not unfit for human habitation, and, thus, the cell itself satisfied the requirements of prohibition against cruel and unusual punishment.

The factors relevant in assessing pain inflicted by a minimally sized cell for the purposes of cruel and unusual punishment clause includes the following: characteristics of prison population; prison staff's morale; amount of time the inmate has to spend in the cell each day; opportunities available for activities outside the cell; and the ability of the prison staff to be flexible and responsive to individual needs and problems created by double-celling.

The amount of time that the inmates are able to spend away from the cells is a critical factor in determining whether conditions of confinement involve wanton and unnecessary infliction of pain in violation of the cruel and unusual punishment clause. The permanence of double-celling of inmates in cells designed for a single inmate is a factor to be considered together with the size of the cells and the opportunities for inmates to leave the cells during the normal routine of the prison life in determining whether double-celling constitutes cruel and unusual punishment. (California Men's Colony, California)

U.S. Appeals Court
LIGHT
SANITATION
SAFETY
REMEDY
FOOD

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

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

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

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

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

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

Persons involuntarily confined by the state have a constitutional right to safe conditions of confinement. Safety hazards found throughout the state prison's occupational areas, which were exacerbated by prison's inadequate lighting and which seriously threatened the safety and security of the inmates, created unconstitutional infliction of pain. The failure to provide adequate cell cleaning supplies in light of overall squalor at the state prison violated the eighth amendment. (State Penitentiary, Washington)

U.S. Appeals Court
MEDICAL CARE

Toombs v. Hicks, 773 F.2d 995 (1985). The Eighth Circuit Court of Appeals remanded a case ruling that an inmate stated a claim for cruel and unusual punishment in being assigned a work duty beyond his physical capacity. After his medical reevaluation, he

claimed he remained on squad assignment for a two-handed hoe, despite that he was classified as fit for only one-armed duty. The court said that while the inmate may ultimately prove no viable claim, he was to be given the chance to develop his case. (Arkansas Department of Correction)

U.S. District Court
REMEDIES
CROWDING

Inmates of Occoquan v. Barry, 650 F.Supp. 619 (D.D.C. 1986). A class of inmates confined at state medium security facilities brought a federal civil rights action seeking declaratory and injunctive relief for deprivation under color of state law of fifth and eighth amendment rights. The district court held that overcrowding and systemically deficient conditions constituted cruel and unusual punishment justifying equitable relief.

Overcrowding and systemically deficient conditions at state medium security institutions constituted cruel and unusual punishment in violation of the eighth amendment justifying equitable relief of imposition of cap on a number of inmates at each facility and requirement of periodic reports indicating what steps were being taken to address deficiencies. The court ruled:

Accordingly, the Court will order that by June 1, 1987, the population of Occoquan I, II, and III shall not exceed a total of 1,281 inmates, with specific caps set for each dormitory. This total is based on a formula providing each inmate a total of 95 square feet of floor space for sleeping and day room purposes. If defendants provide all inmates with opportunities for work, vocational education or other meaningful programs to eliminate enforced idleness among the inmates, the Court will entertain a motion to modify the square footage formula to 85 square feet per prisoner. In connection with the establishment of a population cap at Occoquan, the Court will also order the defendants to provide the Court with a written report by January 15, 1987, indicating precisely how they propose to comply with the population cap."

The plaintiffs contend that an excessive inmate population, deficiencies in environmental health and safety, food services, and mental health care, alone or in combination, violate their rights guaranteed by the Constitution.

The classification of inmates is essential for the prison security. One critical function of classification is the efficient identification of violent, aggressive inmates and those in need of psychiatric care, so that they can be separated from the rest of the population. See, e.g., Palmigiano v. Garrahy, 443 F.Supp. 956 (D.R.I.1977). The classification system at Occoquan appears to be dangerously overtaxed by the crush of inmates in need of classification.

Idleness among inmates results in a variety of problems, including heightened tension, frustration, and violence. The lack of adequate programs can also have an adverse impact on inmates' chances for parole. There was no disagreement among the expert penologists that inmates should be engaged in some productive enterprise, properly supervised. Nonetheless, enforced idleness presents a major problem at Occoquan.

The correctional officers do not supervise properly the sleeping areas of the dormitories. Correctional officers do not make patrols on a frequent and regular basis, nor are officers stationed in the rear of each dormitory so as to facilitate supervision of the living area when inmates are present.

Medical services experts agreed that deficiencies in the medical care delivery system at Occoquan exist which are likely to cause harm to the inmates. These deficiencies are systemic in nature, concerning staffing, facilities, and procedures. (Lorton Correctional Complex, District of Columbia)

U.S. District Court
SANITATION
LIGHT
VENTILATION
REMEDIES

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

U.S. Appeals Court
EXERCISE

Leonard v. Norris, 797 F.2d 683 (8th Cir. 1986). It did not violate the cruel and unusual punishment clause of the eighth amendment to give inmates in punitive isolation no out-of-cell exercise for the first fifteen days of punitive confinement. The exercise policy, although severe, and perhaps even harsh, was not cruel or barbaric. It

had the purpose of discouraging disruptive behavior that made an inmate unfit to circulate among the prison's general population. (Cummins Unit, Department of Corrections, Arkansas)

U.S. District Court
MEDICAL CARE

Quarrels v. Breton, 645 F.Supp. 211 (E.D. Mich. 1986). A prison nurse's alleged failure to transmit a letter to prison officials from a consulting physician recommending that an inmate be prescribed an anti-inflammatory drug did not constitute a violation of the inmate's eighth amendment right to be free from cruel and unusual punishment. At most, the nurse committed negligence, and her action did not amount to deliberate indifference to the inmate's serious medical needs. (State Prison for Southern Michigan)

U.S. Appeals Court
PRETRIAL
DETAINEES
CROWDING

Reece v. Gragg, 650 F.Supp. 1297 (10th Cir. 1986). A pretrial detainee representing a class of all present and future pretrial detainees and sentenced inmates held in the county jail brought action seeking injunctive relief to require that operation of the jail under present conditions cease. The district court held that: (1) the current operation and condition of the county jail violated the due process clause of the fifth and fourteenth amendments and the eight amendment's prohibition against cruel and unusual punishment, and (2) due to unconstitutional conditions at the jail, an injunction was warranted, but would be stayed under conditions outlined by court.

To the extent that the county jail is unable to segregate pretrial detainees and sentenced inmates, the higher standard applicable under the due process clause, rather than the eighth amendment, must be met by the entire facility.

Jail overcrowding for the purpose of allowing the county to house more inmates without creating more jail space is an impermissible justification for resulting violations of due process and prohibition against cruel and unusual punishment. Severe overcrowding combined with lack of area for exercise, lack of separate dining area, inadequate ventilation, inadequate temperature control, and antiquated and unsanitary plumbing at the county jail violated due process clauses of the fifth and fourteenth amendments and ran afoul of the eighth amendment's proscription against cruel and unusual punishment. (Sedgwick County Jail, Kansas)

1987

U.S. Appeals Court
CROWDING

Akao v. Shimoda, 832 F.2d 119 (9th Cir. 1987), cert. denied, 108 S.Ct. 1301. A Federal lawsuit alleging overcrowding was brought by three prisoners in Hawaii. Finding no eighth amendment violation, the lawsuit was dismissed by the district court. The decision was reversed by the U.S. Court of Appeals, which concurred that an allegation of overcrowding without additional cruel and unusual treatment does not state a claim. However, it found these prisoners had alleged more. The prisoners claimed that because of the increased population, there was "an increase in stress, tension, communicable diseases, and a high increase in confrontations between inmates." (Oahu Community Correctional Center, Hawaii)

U.S. Appeals Court
EXERCISE

Bailey v. Shillinger, 828 F.2d 651 (10th Cir. 1987). After his voluntary transfer to a prison in another state, a Wyoming state prisoner who was serving a sentence for first degree murder murdered another prisoner and was returned to the Wyoming State Prison. The warden assigned him to a maximum security unit without a formal hearing. The prisoner filed a civil rights lawsuit against the warden, alleging his due process rights had been violated. He also charged that he was subjected to cruel and unusual punishment by being deprived of exercise and fresh air. The appeals court concluded that, because of the danger the inmate presented to other inmates and staff, the court concluded the warden was correct in assigning the inmate to maximum security. As to the cruel and unusual treatment charge, the court concluded that the one hour per day of exercise and fresh air was "restrictive" but did not violate the Eighth Amendment. (Wyoming State Prison)

U.S. District Court
CROWDING

Benjamin v. Malcolm, 659 F.Supp. 1006 (S.D.N.Y. 1987). Temporary relief was granted to New York City correctional facilities to allow them to cope with the recent increase in population. However, "no further requests for modification will be granted regardless of foreseeable or unforeseeable problems which may arise." (Brooklyn House of Detention for Men and Queens House of Detention for Men)

U.S. Appeals Court
USE OF FORCE

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

U.S. District Court
USE OF FORCE

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

U.S. District Court
EXERCISE
MEDICAL CARE

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 punishment. (Stateville Correctional Center, Illinois)

U.S. District Court
MEDICAL CARE

Dinger v. City of New Albany, 662 F.Supp. 929 (S.D. Ind. 1987). A civil rights action was filed against the city and a police officer by three inmates. They claimed that they were exposed to AIDS while confined, violating their Eighth Amendment right against cruel and unusual punishment. They requested that all inmates be given AIDS screening tests and all homosexual inmates be segregated. The court said that exposing inmates to a communicable disease may violate their constitutional rights, but that the problem of protecting inmates against AIDS is "best left to the legislature and prison administrators." City of New Albany, Indiana)

U.S. Appeals Court
MEDICAL CARE

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

U.S. Appeals Court
CROWDING
SANITATION

Gillespie v. Crawford, 833 F.2d 47 (5th Cir. 1987). Two Texas inmates filed a federal civil rights lawsuit when they contracted tuberculosis after allegedly being housed in crowded and unhealthy conditions, which included inadequate ventilation and lighting, and dirt and insect infestation. The inmates stated that they had repeatedly complained about these conditions, but that no corrective action was taken. The district court dismissed the lawsuit as "frivolous;" on appeal, the dismissal was overturned. According to the appeals court, that intent is not an element of a cause of action for eighth amendment claims alleging unconstitutional conditions of confinement. "Prison conditions," the court said, "may violate the eighth amendment even if they are not imposed maliciously or with the conscious desire to inflict gratuitous pain." The court also refused to bar the inmate's claim on the basis that a special master appointed in an earlier case, Ruiz v. Estelle, 688 F.2d 266 (5th Cir. 1982), cert. denied, 460 U.S. 1042 (1983), was monitoring the correction of prison conditions found in that suit to violate the eighth amendment. (Texas Department of Corrections)

U.S. Appeals Court
USE OF FORCE

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

U.S. Appeals Court
PRIVACY

Kent v. Johnson, 821 F.2d 1220 (6th Cir. 1987). Assuming that there was some right to privacy retained by state inmates and that right protected them from being forced unnecessarily to expose their bodies to guards of the opposite sex, an inmate complaining of that practice state a constitutional claim upon which relief could be granted under the Fourth Amendment, according to a federal appeals court. By alleging that female prison guards allowed themselves unrestricted views of an inmate's naked body in the shower, at close range and for extended periods of time, to retaliate against, punish and harass him for asserting his right to privacy, the inmate stated a cause of action under the Eighth Amendment for cruel and unusual punishment. The court ruled that the prison policy must be reviewed to determine if it is reasonably related to a legitimate penological interest. The district court had initially dismissed the complaint since an opinion issued in Griffin v. Michigan Department of Corrections, 654 F.Supp 690 (E.D.Mich. 1982), a Title VII case, required the Michigan Department of Corrections to allow female guards to patrol housing units of male prisons. The appeals court reversed the dismissal and ordered the consideration of other information--including the inmate's religious beliefs and practices and whether he may have some right to privacy with respect to his genitals must be examined. The court noted that the recent Supreme Court decision in Turner v. Safely, 107 S.Ct. 2254 (1987) requires consideration of a regulation to determine if it is reasonably related to a legitimate penological interest when it infringes on an inmate's constitutional rights. The court ruled that if the facts of Kent's case demonstrate that he has a valid religious belief in not being viewed naked by female officers and that such viewing is an unreasonable search, an invasion of his privacy or constitutes cruel and unusual punishment, the balancing test under Turner must be applied. (State Prison for Southern Michigan)

U.S. District Court
CLOTHING

Knop v. Johnson, 667 F.Supp. 467 (W.D. Mich. 1987). A federal district court ruled that the state failed to provide inmates with adequate winter clothing, in violation of the inmates' right to be free from cruel and unusual punishment, where the state failed to provide adequate winter coat, hat and gloves. Boots were not required if inmates were given adequate winter socks and if walkways and outdoor exercise areas were kept free from snow. (State Prison of Southern Michigan, Michigan Reformatory, Riverside Correctional Facility, Marquette Branch Prison)

U.S. Appeals Court
CELLS
MEDICAL CARE
TOILETS

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. District Court
VIOLENCE

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

U.S. District Court
EXERCISE
WORK

Manley v. Bronson, 657 F.Supp. 832 (D.Conn. 1987). According to a federal district 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
MEDICAL CARE
FAILURE TO
PROVIDE CARE

Meriwether v. Faulkner, 821 F.2d 408 (7th Cir. 1987), cert. denied, 108 S.Ct. 311. According to a federal appeals court, there is no reason to treat transsexualism differently from any other psychiatric disorder in determining whether treatment of the condition presents a "serious medical need." Therefore, the plaintiff stated a valid claim under the Eighth Amendment which, if proven, would entitle her to some kind of medical treatment. In addition to stating a serious medical need, the complaint contained allegations indicating that the defendants were deliberately indifferent to that need. Not only did the defendants fail to provide the plaintiff with any kind of medical treatment, not merely hormone therapy, for her gender dysphoria, but one doctor allegedly ridiculed the plaintiff about her condition. (Indiana State Reformatory in Pendleton, Indiana State Prison)

U.S. District Court
CELLS
REMEDIES

Morales Feliciano v. Hernandez Colon, 672 F.Supp. 627 (D. Puerto Rico 1987). Puerto Rican prison authorities moved to modify stipulation and an order that they provide each prisoner with at least 35 square feet of living space. The district court held that: (1) prison authorities were not entitled to relief under subsection of federal rule allowing modification on the ground that changed circumstances would make further compliance with order unjust; (2) prison authorities failed to show that compliance would result in pernicious consequences, and failed to show changed circumstances warranting relief; and (3) building project undertaken to increase dramatically available beds for housing did not entitle prison authorities to relief. The possible release of prisoners by Puerto Rican prison authorities as a result of compliance with a court order that they provide each prisoner with at least 35 square feet of living space was not a "pernicious consequence" of compliance and did not entitle them to relief from order under Rule 60(b)(6). There was little factual support for assertion that all persons presently incarcerated in Puerto Rico would present danger to the community if released. The argument had an undertone of disingenuity, and compliance would not interfere with efforts of Commonwealth as to enforcement of criminal law or any other policy decision of that entity. The court ruled that prison authorities should have known that the population projection figure on which they relied was, in all probability, inaccurate, and, even if they did not properly assess information available at that time, they certainly knew by the end of 1986 that they had drastically underestimated the actual rate of growth, but did not make the motion for relief from the stipulation, informally apprise the court of predictable problems in compliance, solicit assistance of monitor or seek discussions with plaintiffs' counsel. (Puerto Rico System)

U.S. District Court
SANITATION
TOILETS
NOISE

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

U.S. Appeals Court
DISCIPLINE
WORK
FOOD

Ort v. White, 813 F.2d 318 (11th Cir. 1987). A prison officer's denial of water to an inmate was not cruel and unusual punishment where the inmate refused to carry a water keg to the farm work site, the farm squad remained away from the prison for the entire day under supervision of a single officer, the officer's actions were necessary coercive measures undertaken to obtain compliance with a reasonable prison rule that inmates perform their assigned farm squad duties, the officer denied the inmate water

only when he refused to carry the keg or refused to work, the officer's actions were necessary to prevent a possible disturbance by other inmates on the farm squad, and the inmate was allowed to drink water when he performed work required of all inmates on his farm squad. Although the officer did not follow usual procedures for filing a disciplinary report and conducting a disciplinary hearing before taking action, because the officer was alone in the field supervising an inmate work squad when he was confronted with spontaneous disruption by one of the inmates in his group, the work squad was to be away from the prison for the entire day, and the officer had to take action to maintain discipline and control until the squad returned to the prison, his actions did not violate inmates' due process rights. (Stanton Correctional Facility)

U.S. Appeals Court
ISOLATION

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)

1988

U.S. District Court
PRETRIAL
DETAINEES
CROWDING
REMEDIES

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

U.S. Appeals Court
RESTRAINTS
USE OF FORCE
SECURITY

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

U.S. Appeals Court
USE OF FORCE

Clark v. Evans, 840 F.2d 876 (11th Cir. 1988) A civil rights action was brought, based on the fatal shooting of a prisoner who was attempting to escape from the state prison, against the Commissioner of the State Department of Corrections, the prison warden, the guard who fatally shot the prisoner, and guards who were on yard or in building complex nearby when prisoner attempted to escape. The district court dismissed all claims against all defendants in their official capacities, granted summary judgment for the commissioner and guards located near the prisoner, but rejected qualified immunity defense asserted by the warden and guard who shot the prisoner in their individual

capacities. The warden and the guard who shot the prisoner appealed, and the plaintiffs appealed the dismissal of the other defendants. The appeals court held that: (1) a reasonable officer could have believed that the guard's actions in shooting the prisoner were lawful, and accordingly, the guard was entitled to qualified immunity for use of deadly force; (2) the commissioner was not liable on theory he had instituted and perpetuated a policy that committal orders of state court judges would be ignored and that the prisoner's death occurred as a direct result of the prisoner not having been transferred to a mental hospital pursuant to involuntary commitment order, and (3) nearby guards were not liable on the theory that they were deliberately indifferent to a prisoner's safety or serious medical needs. The court noted that, in determining whether a state prison guard who fatally shot a prisoner who was attempting to escape was entitled to qualified immunity in a civil rights action based on the shooting, the proper inquiry was not whether escape could reasonably have been prevented in a less violent manner, but rather, whether a reasonable officer with information available to the guard who shot the prisoner could have believed that less violent means were not reasonably available (see Anderson v. Creighton, 107 S.Ct. 3034 (1987)). The plaintiffs also argued that the use of deadly force in this instance was unlawful, since the law forbids the execution of insane persons. The court disagreed, noting that the inmate was not executed (killed as a punishment), but instead was shot in an effort to prevent escape. (Georgia State Prison)

U.S. Appeals Court
REMEDIES

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

U.S. Appeals Court
EXERCISE
PLUMBING

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

U.S. Appeals Court
SPOUSES

Davis v. Carlson, 837 F.2d 1318 (5th Cir. 1988). A prisoner and his wife filed a pro se complaint seeking declaratory judgment regarding the manner in which the prison was administered. The federal district court dismissed the case. The prisoner and his wife appealed. The appeals court held that: (1) the prisoner's complaint was properly dismissed for failure to exhaust administrative remedies; (2) the Bureau of Prisons had no duty to transfer the prisoner to a prison near the wife's residence; (3) the wife had no right to conjugal visits; and (4) the prisoner's incarceration did not violate the wife's rights against cruel and unusual punishment. The prisoner was not incarcerated to punish the wife, and hardships caused to a prisoner's spouse did not preclude the prisoner's incarceration. (U.S. Bureau of Prisons)

U.S. Appeals Court
FOOD

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" suffer 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. District Court
EXERCISE
SANITATION
CELLS

Harris v. Fleming, 839 F.2d 1232 (7th Cir. 1988), affirmed, 993 F.2d 1549. An inmate filed a federal civil rights lawsuit against three prison officials, claiming he had been subjected to cruel and unusual punishment seeking \$320,000 in compensatory and punitive damages. The inmate stated that the prison failed to supply him with toilet paper for five days, or with soap, toothpaste or a toothbrush for ten days and he was kept in a "filthy" roach-infested cell. He also complained that during 28 days in a segregation unit he was refused permission to exercise. Since the inmate suffered no physical harm, but merely some unpleasantness, the federal appeals court found that the defendants' temporary neglect of the prisoner was not intentional and that it did not reach unconstitutional proportions. While the court found that the circumstances of the case demonstrated some neglect and indifference on the prison's part, it concluded that the conditions were temporary and affected only one inmate. Although the inmate was deprived of "yard or recreation time," he could have "improvised temporarily with jogging in place, aerobics, or pushups." (Menard Correctional Center, Illinois)

U.S. District Court
MEDICAL CARE

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

U.S. District Court
WORK

Jackson v. O'Leary, 689 F.Supp. 846 (N.D. Ill. 1988). A federal district court ruled that a prison inmate has no constitutional right to prison employment. Further, in order to demonstrate a violation of his constitutional rights because he was reassigned to a less desirable job, the inmate must invoke state law or regulations that created a protected liberty or property interest in a particular prison job. Also, there would only be an equal protection violation if prison officials made the decision in a manner that involved intentional or purposeful discrimination. There was no violation of the Eighth Amendment's protection against cruel and unusual punishment when the plaintiff was reassigned from an administrative job paying \$45 per month to a manual labor job paying \$15 per month. The fact that the prisoner had a preference for clerical rather than manual labor did not support a claim of "cruel and unusual punishment." Prison officials had not, in this instance, knowingly compelled the prisoner to do work that caused him undue pain or endangered the prisoner's life or health, or exceeded his physical capacity. (Stateville Correctional Center, Illinois)

U.S. District Court
USE OF FORCE

Parker v. Asher, 701 F.Supp. 192 (D. Nev. 1988). An inmate brought a civil rights action against a correctional officer. The inmate's allegations, that the correctional officer threatened to shoot him with a "taser gun" for no legitimate penological reason and in fact pointed the loaded gun at him, and that the inmate suffered great anguish and distress due to his fear that the officer would in fact subject him to immediate bodily harm, stated a cognizable claim for violation of the inmate's eighth amendment right to be free from cruel and unusual punishment. The court stated that prison guards cannot aim "taser guns" at inmates for the malicious purpose of inflicting gratuitous fear. (Nevada State Prison)

U.S. Appeals Court
SAFETY

Vosburg v. Solem, 845 F.2d 763 (8th Cir. 1988), cert. denied, 109 S.Ct. 313. A former inmate brought a Section 1983 action against prison wardens to recover for violation of his right to be free from cruel and unusual punishment arising out of sexual assaults by fellow inmates. A federal appeals court ruled: (1) evidence created a jury question whether wardens violated the inmate's right to be free from cruel and unusual punishment; (2) an erroneous damage instruction that permitted a jury to award

damages for an abstract violation of Eighth Amendment was harmless; and (3) the inmate was entitled to postjudgment interest from the date of the verdict. Prison officials may be liable for deliberate indifference to prisoner's constitutional right to be free from sexual attacks by other inmates, if they actually intend to deprive him of that right or if they act with reckless disregard of right. Reckless disregard of prisoner's right to be free from sexual attacks by other inmates may be shown by existence of pervasive risk of harm to inmates from other prisoner and failure of prison officials reasonably to respond to risk. Pervasive risk of harm to inmates by other prisoners may not ordinarily be shown by pointing to a single incident or to isolated incidents, but it may be established by much less than proof of reign of violence and terror in a particular institution; it is enough that violence and sexual assaults occur with sufficient frequency to put prisoners in reasonable fear for their safety and reasonably to apprise prison officials of existence of problem and need for protective measures. To establish pervasive risk of harm to inmates by other prisoners, it is not necessary to show that all prisoners suffer pervasive risk of harm, but it is enough that identifiable group of prisoners do, if the complainant is member of that group. (South Dakota State Penitentiary)

1989

U.S. Appeals Court
CLOTHING
USE OF FORCE

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

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

U.S. District Court
DOUBLE CELLING
TOTALITY OF
CONDITIONS

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

U.S. District Court
PROTECTIVE
CUSTODY

Crozier v. Shillinger, 710 F.Supp. 760 (D. Wyo. 1989). Protective custody inmates brought an action to challenge the suspension of certain opportunities and benefits that were afforded to the general prison population. The defendants moved for a summary judgment. The district court found that giving certain benefits and opportunities to the general prison population without giving those opportunities and benefits to protective custody inmates was not cruel and unusual punishment. According to the court, a prisoner has no absolute constitutional right to visitation. Cancelling some visits for protective custody inmates due to conflicting visits to prisoners in the general

population was constitutional. Giving the protective custody inmates fewer benefits and opportunities than the general prison population was not cruel and unusual punishment and did not violate the fourteenth amendment. The suspension of certain benefits and opportunities represented accommodation with institutional interest in providing adequate protection to protective custody inmates. (Wyoming State Penitentiary)

U.S. District Court
CELLS
INJURY

Denz v. Clearfield County, 712 F.Supp. 65 (W.D. Pa. 1989). A prisoner brought a civil rights action against Clearfield County and the County moved to dismiss. The district court found that the occurrence of a slip and fall injury as a result of dank, hot and humid cell conditions did not constitute cruel and unusual punishment and did not transform the conduct of the county into a wanton infliction of unnecessary pain. The prison inmate did not have a due process claim where the inmate had an opportunity to pursue a postdeprivation remedy in state court, and the complaint was dismissed.

There is no constitutional liberty interest infringed upon by the merely negligent conduct of prisoner officials. (Clearfield County Prison, Pennsylvania)

U.S. District Court
SMOKING

Doughty v. Bd. of County Com'rs for County of Weld, 731 F.Supp. 423 (D. Colo. 1989). County jail inmates brought an action challenging the application to the jail of the county's no-smoking ban. The U.S. District Court found that the smoking ban did not violate the eighth or fourteenth amendment rights of the inmates, ruling that an application to the jail of a county-wide policy in prohibiting smoking in any public building was reasonably related to the county's goals. Evidence demonstrated that the use of designated smoking areas, rather than a complete ban on smoking in the county jail, was not a viable alternative to the no-smoking rule and the policy banning smoking in the jail did not constitute cruel and unusual punishment. (Weld County Jail, Colorado)

U.S. District Court
MEDICAL CARE
SAFETY

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

U.S. Appeals Court
VIOLENCE
CROWDING

Fisher v. Koehler, 718 F.Supp. 1111 (S.D.N.Y. 1989), aff'd., 902 F.2d 2 (2nd Cir. 1990). Prison inmates brought a class action against prison officials and others, challenging conditions of confinement as violative of their rights under the federal constitution. Following a finding, 692 F.Supp. 1519 (S.D.N.Y. 1988), that violence at the prison reached a level which violated the eighth amendment, the defendants were given the opportunity to submit a reasonable plan for the court's consideration. The district court found that the proposed plan to reduce violence by staff and inmates against inmates to comply with the eighth amendment would be adopted, with some modifications. The prison officials would be allowed to house protective custody inmates in dormitories in light of plan for exclusion from protective custody of inmates with a significant history of violence and for cell housing of inmates whose vulnerability or history of violence required their separation. Before the court would limit the prison population by prohibiting the housing of more than 50 inmates in a dormitory, which would have required the displacement of approximately 500 inmates, the Department of Corrections would be given an opportunity to reduce the level of violence at the prison to a constitutionally acceptable level by addressing major sources of violence other than crowding. The prison officials were entitled to an opportunity to establish that periodic, rather than permanent, presence of an officer would prove sufficient to prevent violence in dormitories consisting of inmates with little or no history of assaultive behavior.

The appeals court found that conditions at the prison violated the eighth amendment, and the district court's remedy was properly formulated. (Correctional Institute for Men, New York City, New York)

U.S. Appeals Court
WORK

Franklin v. Lockhart, 890 F.2d 96 (8th Cir. 1989). A prison inmate brought a civil rights complaint for prison authorities' alleged violation of free exercise and eighth amendment rights. The U.S. District Court entered an order dismissing the complaint, and the inmate appealed. The appeals court, affirming in part, reversing in part, and remanding, found that the allegations in the inmate's complaint that work which he had to perform while assigned to the prison hoe squad taxed him beyond his physical capacity, were sufficient to state an eighth amendment claim. The allegations in the complaint, that the work involved the handling of manure and dead animals contrary to the inmate's Muslim faith, were also sufficient to state a free exercise claim. (Arkansas State Prison)

U.S. Appeals Court
ISOLATION
MEDICAL CARE
SECURITY
DISCIPLINE

Harris v. Davis, 874 F.2d 461 (7th Cir. 1989), *cert. denied*, 110 S.Ct. 735. An inmate filed an action under Section 1983 against correctional officers, alleging that they subjected him to cruel and unusual punishment by forcing him to take an emetic and by denying him necessary medical assistance, while he was in deadlock. In addition, the inmate charged that officers violated his procedural due process rights by improperly consigning him to deadlock without a hearing. The U.S. District Court entered judgment on a jury verdict in favor of the defendants, and the inmate appealed. The appeals court affirmed and found that the erroneous admission of "other acts" evidence was harmless. References to the suggestive nature of photographs seized from the inmate were not admissible as evidence of other crimes, wrongs or acts in the inmate's civil rights action in which the inmate asserted a due process claim that the correctional officer consigned the inmate to deadlock without a hearing for conduct that allegedly posed a threat to the security of the institution. The officer's decision was based solely on the officer's determination that the inmate had swallowed contraband, and the presence of suggestive photographs was completely irrelevant. The references to a disciplinary ticket which the inmate received for possession of homemade moonshine in his cell were not admissible as evidence of other crimes, wrongs or acts. Although evidence that the inmate had swallowed homemade moonshine a week after taking an emetic to determine the presence of contraband might have provided an alternative explanation for his claimed injuries and thus might have been admissible on the issue of damages, the defendants never established that the inmate ingested any of the alcohol. (Menard Correctional Center, Illinois)

U.S. Appeals Court
CELLS
SANITATION

Howard v. Adkison, 887 F.2d 134 (8th Cir. 1989). An inmate brought an action against the supervisory officers at the facility at which he was confined, alleging the violation of his eighth amendment rights. The U.S. District Court entered a judgment in favor of the inmate, and the defendants appealed. The appeals court affirmed and found that the evidence concerning filthy conditions in the inmate's cell was sufficient to support a finding that the inmate's eighth amendment rights were violated. According to the court, inmates are entitled to reasonably adequate sanitation, personal hygiene, and laundry privileges, particularly over a lengthy period. Evidence that the inmate was confined for two years in a cell covered with filth and human waste and was denied access to proper cleaning supplies or laundry service was sufficient to establish that his confinement was cruel and unusual punishment within the meaning of the eighth amendment. Evidence that the inmate complained about filthy conditions in his cell continuously over a two-year period but that supervisory officers failed to provide him with any relief was sufficient to hold officers liable for eighth amendment violations. The appeals court upheld an award of \$500 actual damages, \$1 nominal damages and \$750 punitive damages against the special unit manager, and \$1,000 punitive damages against the lieutenant. (Missouri Department of Corrections and Human Resources)

1990

U.S. Appeals Court
FAILURE TO
PROTECT
SAFETY

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

U.S. District Court
USE OF FORCE

Bony v. Brandenburg, 735 F.Supp. 913 (S.D. Ind. 1990). A prisoner sued prison officials, alleging cruel and unusual punishment in connection with the use of force to remove him from his cell after he refused to obey an order to come forward to be handcuffed. Evidence established that the officials acted properly and pursuant to governing regulations and standards, and there was no evidence of unnecessary and wanton infliction of pain. As a result, the defendants were entitled to qualified immunity. (United States Penitentiary, Terre Haute, Indiana)

U.S. District Court
SMOKE

Caldwell v. Quinlan, 729 F.Supp. 4 (D. D.C. 1990). An inmate brought a civil rights action against the Director of a Federal Bureau of Prisons, alleging that his frequent exposure to passive tobacco smoke violated his constitutional rights. The district court granted a motion filed by the Director to dismiss. The court stated that the director's failure to constantly segregate smokers from nonsmokers did not constitute cruel and unusual punishment and that individuals do not have a constitutional right to be free from passive tobacco smoke, so the exposure to passive smoke did not trigger protections of the due process clause or violate equal protection rights. In addition, the Bureau of Prisons' smoking policy, which provided only that the warden may implement a smoking policy at his discretion, did not create a liberty interest to a smoke-free prison term. The inmate's occasional exposure to smoke drifting over from designated "smoking" areas did not violate the eighth amendment. According to the court, the Federal Bureau of Prisons has not been indifferent to nonsmoking inmates. Federal regulations provide that "The Warden, as set forth in this rule, may establish smoking/no smoking areas with the institution. (a) Smoking is prohibited in those areas where to allow smoking would pose a hazard to health or safety. (b) Smoking/no smoking areas may be established in other areas of the institution, at the discretion of the Warden."

The court found that contemporary society "has yet to view the exposure to second-hand smoke as transgressing its broad and idealistic concepts of dignity, civilized standards, humanity and decency." The plaintiff's occasional exposure to such smoke, therefore, was not cruel and unusual punishment. (United States Penitentiary, Marion, Illinois)

U.S. Appeals Court
DOUBLE CELLING

C.H. v. Sullivan, 920 F.2d 483 (8th Cir. 1990). Prisoners serving sentences under the federal witness security program brought action against the Attorney General and his agents, challenging double-celling. On cross motion for summary judgment, the U.S. District Court granted the defendants' motion, and the prisoners appealed. The court of appeals, affirming the decision, found that the court did not have jurisdiction over the prisoners' breach of contract claim. It also found that the double-celling of prisoners is not unconstitutional for a general prison population absent deprivation of food, medical care, sanitation, increased violence, or other conditions intolerable for incarceration, and the government's practice of selecting double-celled prisoners by seniority was not arbitrary and capricious and did not violate the due process rights of prisoners serving sentences under the Federal Witness Protection Program. Some procedure for choosing which prisoners would be double-celled was necessary, and the seniority system prevented discriminatory treatment and encouraged witnesses to obey prison regulations. (Federal Correctional Institute, Sandstone, Minnesota)

U.S. Appeals Court
SMOKE

Clemmons v. Bohannon, 918 F.2d 858 (10th Cir. 1990). A state prisoner brought a civil rights action alleging violations of his constitutional rights arising out of involuntary subjection to environmental tobacco smoke. Summary judgment for the defendants was granted by the U.S. District Court, and the prisoner appealed. The court of appeals found that exposing the prisoner to an unreasonable risk of a debilitating or terminal disease offends "evolving standards of decency" protected by the Eighth Amendment. According to the court, a relevant inquiry is whether long-term exposure to environmental tobacco smoke poses an unreasonable risk of harm to an inmate's health and is a relevant question in determining whether a prison policy of permitting indefinite double-celling of smokers with non-smokers against the nonsmokers' expressed will is cruel and unusual punishment in violation of the Eighth Amendment. (Kansas State Penitentiary)

U.S. Appeals Court
MEDICAL CARE
NOISE

Givens v. Jones, 900 F.2d 1229 (8th Cir. 1990). A former inmate filed a civil rights action against various employees and officials of a prison asserting violations of his constitutional rights. The U.S. District Court granted the defendants' motions for summary judgment on all but three of the claims, and the defendants named in the remaining three claims appealed. The court of appeals, reversing the lower court decision, found that at the time a psychiatrist prescribed a medication to which the inmate claimed to be allergic, it was not clearly established that such conduct constituted a deliberate indifference to the inmate's serious medical needs. It was also found that prison officials could reasonably have believed that the noise and fumes caused by the remodeling of the prison, which the inmate claimed gave him migraine headaches, were not so excessive as to constitute an eighth amendment violation. According to the court, a constitutional guarantee of freedom from cruel and unusual punishment does not protect against mere acts of negligence on the part of prison officials and employees. To be cruel and unusual

punishment, conduct that does not purport to be punishment at all must involve more than ordinary lack of due care for the prisoner's interests or safety and it is obduracy and wantonness, not inadvertence or error in good faith, that characterize the prohibited conduct. (Missouri Training Center for Men)

U.S. District Court
MEDICAL CARE

Gomm v. DeLand, 729 F.Supp. 767 (D. Utah 1990). A prisoner filed an action against prison officials alleging that the defendants subjected him to cruel and unusual punishment in violation of the eighth and fourteenth amendments. The district court found that there was no evidence that prison personnel acted with deliberate indifference toward the prisoner's medical problems. The prison warden did not act with deliberate indifference toward the prisoner so as to violate the eighth amendment, in connection with the warden's refusal to allow the prisoner's private physician to perform shoulder surgery. The warden did not have the authority to order surgery for the prisoner. After the prisoner's private physician recommended surgery, the prison's act of obtaining a second opinion, pursuant to prison policy, which resulted in a delay, did not violate the eighth amendment. (Utah State Prison)

U.S. District Court
NOISE

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. District Court
DOUBLE CELLING
TOTALITY OF
CONDITIONS

Kitt v. Ferguson, 750 F.Supp. 1014 (D.Neb. 1990), affirmed, 950 F.2d 725. Inmates at a medium security unit sued the Director of the Department of Correctional Services and the prison warden, claiming that conditions in the unit constituted cruel and unusual punishment. The U.S. District Court found that inmates sufficiently established an allegation which properly raised a legitimate question that their constitutional rights may have been violated by conditions at the unit, and that prison officials knew or should have known that their conduct may have violated such rights. Thus, officials were not entitled to a defense of qualified immunity. Conditions of confinement did not violate the inmate's constitutional rights under a totality of circumstances; however, problems with heating, plumbing, and ventilation systems needed to be addressed, and the presence of HIV positive inmates in the general prison population was also a cause for concern. (Nebraska State Penitentiary)

U.S. District Court
BEDDING
CLOTHING
EXERCISE
FOOD
ISOLATION
RESTRAINTS

LeMaire v. Maass, 745 F.Supp. 623 (D. Or. 1990). An inmate brought a civil rights action, alleging unconstitutional conditions of his imprisonment in a disciplinary segregation unit. The U.S. District Court found: The use of full mechanical in-cell restraints, without control procedures to ensure that such practice was used only for safety purposes and limited to time necessary to serve that purpose, constituted cruel and unusual punishment; requiring inmates to shower in full mechanical restraints had no legitimate penological justification, and thus constituted cruel and unusual punishment; the practice of placing inmates on a controlled feeding status, during which they are fed "Nutraloaf," for reasons other than misuse of food or utensils for up to seven days at a time constituted cruel and unusual punishment; there was no legitimate penological justification for extending controlled feeding after misconduct has ceased or for conduct that could continue even with such feeding; the placement of inmates with serious medical problems in "quiet cells" from which they could not summon guards to assist them constituted cruel and unusual punishment; the policy of taking inmate's clothing, bedding and personal property as punishment for behavior not connected to misuse of clothing or property and requiring inmates to "earn back" items taken by demonstrating good behavior lacked legitimate penological justification and constituted cruel and unusual punishment; and the exercise conditions in the prison disciplinary unit constituted cruel and unusual punishment because the inmate was denied outdoor exercise for nearly five years and it was not possible for him to get sufficient exercise in his cell to prevent physical and mental deterioration. (Oregon State Penitentiary)

U.S. Appeals Court
CLOTHING
WORK

Madewell v. Roberts, 909 F.2d 1203 (8th Cir. 1990). A civil rights action was brought by inmates in a state correctional facility for damages and declaratory injunctive relief based on the prison officials' alleged violation of due process and equal protection rights, retaliatory actions, and violation of the right to be free from cruel and unusual punishment. The U.S. District Court granted the defendants' motions for a summary judgment, and the prisoners appealed. The appeals court, affirming in

part and remanding in part, found that the material question of fact, as to whether the prison officials violated the arthritic inmate's eighth amendment rights by requiring him to sit without a coat on the cold concrete floor for four or more hours in an unheated workplace, precluded an entry of a summary judgment on the prisoner's "cruel and unusual punishment" claim, but the inmate did not have a protected "liberty interest" in being classified for a particular job, notwithstanding that the job classification affected the ability to earn good time credits. (Maximum Security Unit, Arkansas Department of Corrections)

U.S. Appeals Court
MEDICAL CARE

Miltier v. Beorn, 896 F.2d 848 (4th Cir. 1990). The administratrix of the estate of a prison inmate brought action against doctors, nurses, wardens and prison administrators asserting an eighth amendment violation in deliberate indifference to serious medical needs. The U.S. District Court dismissed the civil rights claim. On appeal, the court of appeals, affirming in part, reversing in part, and remanding, found that there were issues of fact precluding summary judgment on claims of deliberate indifference on the part of the prison physicians and nurses with respect to the medical needs of the inmate who had complained of chest pains and other symptoms and who later died of a heart attack. The wardens, who had insured that the inmate received medical treatment, were not liable. Deliberate indifference by prison personnel to an inmate's serious illness or injury is actionable under the civil rights statute as constituting cruel and unusual punishment contravening the eighth amendment. Deliberate indifference may be demonstrated by either actual intent or reckless disregard, but the treatment must be so grossly incompetent, inadequate or excessive as to shock the conscience or be intolerable to fundamental fairness. (Virginia Correctional Center for Women)

U.S. District Court
VIOLENCE

Osos v. Fair, 739 F.Supp. 707 (D. Mass. 1990). A state inmate brought a Section 1983 action against a Department of Corrections employee alleging a violation of the eighth amendment. The district court found that the assaultive conduct of the employee against the inmate during which the employee, inter alia, cocked a gun with one bullet in the chamber while the barrel was in the inmate's mouth, violated the inmate's right to be free from cruel and unusual punishment. However, the inmate was only entitled to \$1,000 in damages inasmuch as he provoked the employee's behavior by instigating a rumor that he was having a sexual affair with the employee's wife. (Old Colony Prison, Massachusetts)

U.S. Appeals Court
USE OF FORCE
RESTRAINTS

Stenzel v. Ellis, 916 F.2d 423 (8th Cir. 1990). An inmate who was forcibly removed to an isolation cell brought a Section 1983 action against the jailers. The U.S. District Court granted summary judgment for the defendants, and appeal was taken. The court of appeals found that the guards use of force to remove the inmate from a regular cell to an isolation cell was justified, and thus did not constitute an Eighth Amendment violation. The inmate had been asked three times to uncover his head while sleeping and had finally unequivocally refused, and his size, slippery skin as a result of lotion on his body, and "passive resistance" made him awkward to move. It was also found that the chaining of the inmate to his bunk in the isolation cell, after he refused to remove an obstruction from the observation camera, did not constitute cruel and unusual punishment, in violation of the Eighth Amendment; restraint was accomplished without the use of force, and was the only way to prevent the inmate from breaking a rule once he made it clear that he had no intention of obeying it. (Minnehaha County Jail, Sioux Falls, South Dakota)

U.S. District Court
FAILURE TO
PROTECT
INJURY
SAFETY

Warren v. State of Mo., 754 F.Supp. 150 (W.D. Mo. 1990), affirmed, 995 F.2d 130. An inmate brought an action against prison officials for violation of the Eighth Amendment. On the officials' motions to dismiss, the U.S. District Court found that the allegation that the prisoner was required to work with a table saw that was known to be dangerous was sufficient to state a cause of action for violation of the prisoner's Eighth Amendment rights. The prison officials were not entitled to qualified immunity from liability to the inmate who claimed he was injured by the table saw which officials knew posed a serious risk of injury. The officials should have known that the alleged conduct violated a clearly established prohibition against reckless indifference to the prisoner's safety. The court also found that the prisoner, who was alleging a valid Eighth Amendment claim, could not also bring a separate, independent claim under Section 1983 for the same behavior based on substantive due process. (Missouri State Penitentiary)

U.S. District Court
FAILURE TO
PROTECT
REMEDIES
SEPARATION
SMOKE

West v. Wright, 747 F.Supp. 329 (E.D. Va. 1990). An inmate brought a pro se civil rights complaint alleging that his exposure to other prisoners' cigarette smoke constituted cruel and unusual punishment, and prison officials moved for summary judgment. The U.S. District Court found that the prisoner, who did not suffer from any preexisting medical condition that was aggravated by tobacco smoke, was not subjected to cruel and unusual punishment as a result of being exposed to other prisoners' cigarette smoke in light of existing safeguards implemented by prison officials to protect nonsmokers from environmental tobacco smoke. Each cell had a window which the inmate may open or close as he chooses. Each cell and day room also had output and input vents that provided

continuous circulation of natural air for adequate ventilation. The inmates assigned to the general population may also have personal fans in their cells and pedestal fans are located in each of the housing units and are operated by the inmates. It is also noted that smoking is prohibited in the library, dining hall, gymnasium and medical department, and inmates in the general population are afforded recreational opportunities and are confined in their housing units only during count and after lockdown in the evening. (Brunswick Correctional Center, Virginia)

State Appeals Court
BEDDING

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

U.S. Appeals Court
DOUBLE-CELLING
SEPARATION
TOTALITY OF
CONDITIONS
TEMPERATURE

Wilson v. Seiter, 893 F.2d 861 (6th Cir. 1990). Inmates brought an action against prison officials alleging cruel and unusual punishment. The U.S. District Court granted the defendants' motion for summary judgment, and the inmates appealed. The appeals court, affirming the decision, found that the occasional exposure of inmates to temperatures as high as 95 degrees and the practice of housing mentally ill inmates with other inmates did not constitute cruel and unusual punishment. The double-bunking of inmates, and allowing each inmate only approximately 50 square feet of living space, did not constitute cruel and unusual punishment, where the inmates also had access during the day to the television lounge, gymnasium, yard, weight room, billiards table, and library. The inmates' position that present prison conditions remained unacceptable, despite measures taken by prison officials to reduce the noise level, service heaters, provide inmates with extra blankets during the winter months, install exhaust fans for improved ventilation, clean lavatories and the kitchen on a daily basis, and contract with an exterminator to treat the prison for pests on a twice-monthly basis, simply alleged negligence on the part of the prison officials, and thus failed to raise a reasonable inference of obduracy and wantonness on the part of prison officials to support a claim for cruel and unusual punishments. (Hocking Correctional Facility, Nelsonville, Ohio)

1991

U.S. District Court
MEDICAL CARE

Andrews v. Glenn, 768 F.Supp. 668 (C.D. Ill. 1991). An inmate brought an action under Section 1983, alleging that Department of Corrections employees had violated his Eighth Amendment rights. The district court found that the delay in treating the inmate's infected toes was not cruel and unusual punishment. The prisoner was denied treatment for the two infected toes on the first day he appeared at a prison's health care unit because he arrived late for sick call. The next day, after waiting to be seen, he created a disturbance and left on his own volition without being seen by a nurse. On the third day he was seen by a nurse. He also claimed that he did not receive proper care because the nurse refused to wash his feet for him. The inmate was seen by a doctor seven days after he first appeared at sick call and received treatment. To state a claim for the deprivation of medical care, a prisoner must allege "deliberate indifference to serious medical needs." In applying the test, the court is to consider such factors as the severity of the medical problem, whether the potential for harm if medical care is denied or delayed is substantial, and whether such harm actually resulted from the lack of medical attention. The inmate's infected toes presented no substantial potential for harm if not promptly treated, and no serious harm was suffered. (Logan Correctional Center, Illinois)

U.S. District Court
MEDICAL CARE
FAILURE TO
PROVIDE CARE

Brown v. Coughlin, 758 F.Supp. 876 (S.D.N.Y. 1991). An inmate brought a Section 1983 action against various state and local officials, alleging deliberate indifference to his serious medical needs. On defendants' motion to dismiss, the district court found that issue of material fact as to whether state and local officials were deliberately indifferent to the inmate's serious medical needs, in violation of his constitutional right to be free from cruel and unusual punishment, precluded summary judgment for the officials. It was alleged that amputation of the inmate's leg, after a broken bone had become infected, was necessitated by repeated instances of denied treatment, excessively delayed care, incorrect

medications, and noncompliance with medical orders. Even one isolated failure to provide medical treatment to a prisoner, without more, while ordinarily not actionable, may in fact rise to the level of constitutional violation if the surrounding circumstances suggest a degree of deliberateness, rather than inadvertence, in the failure to render meaningful treatment. (Downstate Correctional Facility, New York)

1991

U.S. District Court
DISCIPLINE

Duenas v. Nagle, 765 F.Supp. 1393 (W.D. Wis. 1991). A prisoner brought a civil rights action alleging violations of his procedural due process and Eighth Amendment rights in connection with prison disciplinary hearings. Prison officials filed a motion to dismiss. The district court found that the prison officials' alleged noncompliance with established state procedures for disciplinary proceedings constituted random and unauthorized acts for which there was adequate postdeprivation remedy, and therefore such noncompliance did not give rise to a procedural due claim under the federal civil rights statute. It was also found that the prisoner failed to adequately allege that prison officials' alleged noncompliance with established state procedures for prison disciplinary proceedings violated the prisoner's Eighth Amendment right to be free from cruel and unusual punishment, where the prisoner, beyond asserting that he had suffered, did not allege any specific facts that would support a finding that his confinement was of a type forbidden by the Eighth Amendment. (Columbia Correctional Institution, Portage, Wisconsin)

U.S. District Court
MEDICAL CARE
USE OF FORCE

Fenner v. Moran, 772 F.Supp. 59 (D. R.I. 1991). A prisoner brought a civil rights action seeking declaratory judgment that prison officials and medical staff members violated his Eighth and Fourteenth Amendment rights and monetary damages in both their official and individual capacities. The defendants moved to dismiss for failure to state a claim upon which relief could be granted. The district court found that the incorrect diagnosis that the prisoner had leukemia, was not cruel and unusual punishment and the prisoner's due process rights were not violated by the misdiagnosis. The allegations that three correctional officers hit the prisoner in his rib and groin area before transporting him to high security for further detention, if proven true, could demonstrate "reckless or callous" indifference to the prisoner's constitutional right to be free from cruel and unusual punishment; thus, the allegations stated a Section 1983 civil rights action. (Adult Correction Institute, Cranston, Rhode Island)

U.S. District Court
CLOTHING

Friends v. Moore, 776 F.Supp. 1382 (E.D. Mo. 1991). An inmate brought a Section 1983 action against various prison officials. The district court found that the conditions of the inmate's confinement in an outdoor rec area, wet and naked for a period of less than two hours, did not constitute cruel and unusual punishment. The prison officials placed the inmate in the rec area not for punishment but to restore order in the prison unit. The inmate was moved from his cell to the rec area to facilitate cleanup of the unit which he necessitated by setting off a sprinkler, and the duration of the confinement was relatively brief. (Potosi Correctional Center, Missouri)

U.S. District Court
FOOD

Gardner v. Beale, 780 F.Supp. 1073 (E.D.Va. 1991), affirmed, 998 F.2d 1008. A prisoner brought a Section 1983 action against a warden and an intensive treatment center where the prisoner's unit was working, alleging violations of the department of corrections meal service manual. The defendants moved for summary judgment. The district court found that providing the prisoner with only two meals per day (brunch and dinner on Friday, Saturday, and Sunday) which were days the crew did not work, in violation of the corrections department meal service manual, did not constitute cruel and unusual punishment. Although there was an 18 hour interval between dinner and brunch, the prisoner suffered only mental anguish and the warden who instituted the meal policy did not act with a culpable state of mind. According to the court, the corrections department meal service manual provision that prisoners would receive three meals each day with a maximum of 14 hours between dinner and breakfast did not create a due process interest. (Southampton Intensive Treatment Center, Virginia)

U.S. Appeals Court
REMEDIES

Kingsley v. Bureau of Prisons, 937 F.2d 26 (2nd Cir. 1991). A federal prisoner petitioned for a writ of habeas corpus and sought damages. The U.S. District Court dismissed the suit, and appeal was taken. The court of appeals, affirming in part and reversing in part, found that the disciplinary hearing officer's determination that the inmate had waived his request for witnesses due to his inability to identify the other prisoners by name was arbitrary; the need for witnesses was especially compelling in the disciplinary proceeding for failure to provide a urine specimen, the prisoners' identities were readily available to prison officials, and the inmate's inability to identify them by name was understandable in view of his arrival at the prison only five days before the incident at issue. The court also found that the officer's order that the inmate apply ice to his testicles, in an alleged attempt to assist the inmate in providing the required urine sample, did not constitute cruel and unusual punishment such as would support action for damages; no harm was inflicted, and the inmate's allegation, at most, indicated minor and fleeting pain. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
USE OF FORCE

Neal v. Miller, 778 F.Supp. 378 (W.D. Mich. 1991). A state prisoner filed an action against a corrections officer for common law battery under Michigan law and violations of his civil rights. The U.S. District Court found that the inmate was entitled to recover for damages for common law battery under Michigan tort law based on the actions of the correctional officer in intentionally striking the inmate in the groin area; the contact was without provocation, without the inmate's consent, and was not privileged. However, the action did not involve the "deliberate indifference" required to establish cruel and unusual punishment under the Eighth Amendment; the officer had no intent to inflict harm, and his conduct did not show wantonness. The inmate was entitled to a damages award of \$500 for pain and suffering and other physical consequences and an exemplary damages award of \$250. (Ionia Maximum Correctional Facility, Michigan)

U.S. Appeals Court
SMOKING
SMOKE-FREE
ENVIRONMENT

Steading v. Thompson, 941 F.2d 498 (7th Cir. 1991), cert. den., 112 S.Ct. 1206. An asthmatic inmate who could not escape tobacco smoke from guards and his fellow inmates cigarette smoking filed a Section 1983 action, in which he alleged that prison authorities failure to establish a smoke-free environment for inmates not wishing to be exposed to tobacco smoke violated a constitutional prohibition against cruel and unusual punishment. The U.S. District Court granted the defendants' motion to dismiss, and the inmate appealed. The court of appeals found that the private tobacco company that sold its products to officers and inmates in state prison did not thereby become a "state actor," that could be held liable under Section 1983 when tobacco smoke adversely affected the asthmatic prisoner. In addition, the prison authorities did not violate the constitutional prohibition against cruel and unusual punishment by failing to provide a smoke-free environment for inmates who did not wish to be exposed to tobacco smoke. The court did note that prisoners allergic to components of tobacco smoke, or who can attribute their serious medical conditions to tobacco smoke from guards' or fellow inmates' cigarettes, are entitled to appropriate medical treatment, which may include removal from places where smoke hovers. (Sheridan Correctional Center, Illinois)

U.S. Supreme Court
DEFENSES

Wilson v. Seiter, 111 S.Ct. 2321 (1991). Prisoners brought an action against prison officials alleging cruel and unusual punishment. The U.S. District Court granted the officials' motion for summary judgment and the prisoners appealed. The court of appeals affirmed, and certiorari was granted. The U.S. Supreme Court, vacating and remanding, found that the prisoners claiming that conditions of confinement constituted cruel unusual punishment, were required to show deliberate indifference on the part of the prison officials, noting that "nothing so amorphous as 'overall prison conditions' can rise to the level of cruel and unusual punishment when no specific deprivation of a single human need exists." (Hocking Correctional Facility, Ohio)

1992

U.S. Appeals Court
SANITATION
WORK

Burton v. Armontrout, 975 F.2d 543 (8th Cir. 1992), cert. denied, 113 S.Ct. 2960. Inmates brought an action against correctional officers to recover for cruel and unusual punishment for failing to warn inmates that hospital sewage was contaminated with the AIDS (Acquired Immune Deficiency Syndrome) virus and other infectious diseases. The U.S. District Court directed a verdict in favor of some officers, entered judgment on a jury verdict in favor of the remaining officers, and granted an injunction. Appeals were taken, and the appeals court found that the injunction requiring the county correctional center to provide adequate protective clothing and warnings to inmates of potential danger of working in contaminated waste was permissible despite a general verdict in favor of correctional officers on constitutional claims. The court found that evidence showed that despite the passage of three years and a greater awareness of dangers of AIDS, prison officials failed to provide adequate protective clothing. The court also found that the county inmates who were involved in the cleanup of the sewage were not subjected to "cruel and unusual punishment" when correctional officers failed to warn that sewage could be contaminated with the AIDS virus and other infectious diseases. (Jefferson County Correctional Center, Missouri)

U.S. Appeals Court
SMOKING

Clemmons v. Bohannon, 956 F.2d 1523 (10th Cir. 1992). A prison inmate brought a civil rights action alleging violations of the Eighth and Fourteenth Amendments arising out of involuntary subjection to environmental tobacco smoke. The U.S. District Court granted prison officials summary judgment, and the inmate appealed. The court of appeals found that the inmate sometimes being forced to share a cell with a smoker, and being exposed to smoke from other inmates and guards, did not constitute an Eighth Amendment violation; respiratory and eye irritation were not sufficiently serious, and the inmate did not offer any evidence of effects pertaining to his personal health. (Kansas State Penitentiary, Lansing, Kansas)

U.S. Appeals Court
INJURY
SAFETY
FAILURE TO
PROTECT

Duane v. Lane, 959 F.2d 673 (7th Cir. 1992). A prison inmate who was scalded with hot liquid by an unseen assailant brought an action against prison officials alleging that their deliberate indifference to his safety amounted to cruel and unusual punishment in violation of the Eighth Amendment. The U.S. District Court rendered summary judgment in favor of the defendants and the inmate appealed. The court of appeals found that the inmate failed to establish that officials possessed a mental state, which is intent or some functional equivalent such as deliberate indifference, that is required to maintain an Eighth Amendment claim. It was prison policy to prohibit stingers, which are heating services, in the segregated maximum security unit where the inmate was located and to also search general population inmates who entered the unit. Failure to enforce such measures at most, established negligence, not deliberate indifference. (Menard Correctional Center, Illinois)

U.S. Appeals Court
CLOTHING
TEMPERATURE

Gordon v. Faber, 973 F.2d 686 (8th Cir. 1992). Inmates at a state prison brought a Section 1983 action against a security officer. The U.S. District Court assessed damages of \$75 per inmate and ordered the officer to pay costs. The officer appealed and the court of appeals affirmed the decision, finding that the Eighth Amendment rights of the prisoners were violated by their being left outside without proper protection in freezing temperatures for periods varying from one hour to one hour and forty-five minutes, while their living facilities were searched for a weapon alleged to be hidden there. (Iowa Men's Reformatory, Anamosa, Iowa)

U.S. District Court
SMOKE

Guilmet v. Knight, 792 F.Supp. 93 (E.D. Wash. 1992). A prison inmate brought a suit alleging that his Eighth Amendment rights were violated where he was housed with a cellmate who smoked. Upon the defendant's motion for summary judgment, the district court found that the prisoner was not subjected to cruel and unusual punishment in violation of the Eighth Amendment when he was housed for fifteen days with a cellmate who smoked. The intermittent exposure to environmental tobacco smoke during the course of those fifteen days did not pose an unreasonable risk to the prisoner's health and did not deny him the minimal civilized measure of life's necessities. In addition, the conduct of the correctional unit supervisor, who moved the inmate within ten days of his complaint, did not reflect a culpable state of mind. The court noted that the comparatively short delay that occurred was justified by the need to find an inmate with whom the plaintiff would be compatible. Since consideration of the inmate's compatibility is necessary to preserve prison security, the delay in moving the plaintiff was not unreasonable. (Washington State Penitentiary)

U.S. Supreme Court
USE OF FORCE

Hudson v. McMillian, 112 S.Ct. 995 (1992). A prisoner brought a federal rights suit, alleging his Eighth Amendment rights were violated by a beating he received from state correctional officers. The U.S. District Court entered judgment in favor of the prisoner, and the correctional officers appealed. The court of appeals reversed, holding that the prisoner had no claim because his injuries were minor and required no medical attention. The prisoner petitioned for certiorari. The U.S. Supreme Court, reversing the court of appeals decision, found that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even though the prisoner does not suffer serious injury. Whenever prison officials stand accused of using excessive physical force in violation of the cruel and unusual punishment clause, the core of judicial inquiry is whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm. (Angola State Penitentiary, Louisiana)

U.S. Appeals Court
SMOKE

Hunt v. Reynolds, 974 F.2d 734 (6th Cir. 1992), cert. denied, 114 S.Ct. 709. State prison inmates brought a Section 1983 action against prison officials, claiming deprivation of their Eighth Amendment rights by virtue of their being compelled to share cells with smokers. The U.S. District Court entered judgment for the defendants, and the inmates appealed. The court of appeals, reversing and remanding, found that a genuine issue existed as to whether prisoners had serious medical needs for a smoke-free environment. The court noted that prisoners allergic to the components of tobacco smoke, or who can attribute their serious medical conditions to smoke, are entitled to appropriate medical treatment, which may include removal from places where smoke hovers. (Tennessee Department of Corrections)

U.S. Appeals Court
CRUEL AND
UNUSUAL
PUNISHMENT

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

U.S. Appeals Court
SEARCHES

Jordan v. Gardner, 953 F.2d 1137 (9th Cir. 1992), affirmed, 986 F.2d 1521. Female inmates brought a suit challenging the constitutionality of a prison regulation which permitted cross gender pat searches. The U.S. District Court enjoined prison officials from implementing the policy and the prison officials appealed. The appeals court, reversing the decision, found that the regulation did not violate inmates' freedom of religion. The fact that female inmates had no alternative means of observing religious objections to searches did not require invalidation of the regulation permitting cross gender pat searches under the First Amendment given that inmates were able to follow other tenets of their religion and that the inmates failed to show alternatives to the prison policy. The court found that the prison regulation which permitted cross gender searches was reasonable and did not violate the Fourth Amendment, given that searches were conducted for security purposes, were brief in duration and conducted on fully clothed inmates, were conducted in a professional manner, and given that requiring same sex searches would displace officers throughout the prison. The regulation was adopted to meet the prison's internal security needs after careful consideration, prison guards were carefully trained to conduct searches in the least threatening manner, and brief pat searches did not violate evolving standards of decency. (Washington Corrections Center for Women, Washington)

U.S. Appeals Court
SMOKE

McKinney v. Anderson, 959 F.2d 853 (9th Cir. 1992), affirmed, 113 S.Ct. 2475. An inmate brought a civil rights action against prison officials alleging a violation of the Eighth Amendment due to his exposure to environmental tobacco smoke. The U.S. District Court directed verdict for prison officials, and the inmate appealed. The court of appeals affirmed in part, reversed in part, and remanded, and certiorari was granted. The U.S. Supreme Court vacated and remanded. Thereafter, the court of appeals found that housing a prisoner in an environment that exposed him to levels of environmental tobacco smoke that posed an unreasonable risk of harming his health satisfied the objective component of the Eighth Amendment claim of cruel and unusual punishment; however, the inmate would have to establish a subjective component of the claim on remand by showing that prison officials showed deliberate indifference to the inmate's long-term exposure to environmental tobacco smoke. (Nevada State Prison, Carson City)

U.S. Appeals Court
SMOKING

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

U.S. District Court
WORK

Pendergrass v. Hannigan, 788 F.Supp. 488 (D. Kan. 1992). A prisoner filed a civil rights complaint alleging that he was subjected to cruel and unusual punishment when he was forced to work outside during dangerously cold conditions, and that if he had complained of the work conditions he would have been transferred without due process to a less desirable correctional facility. The warden filed a motion for summary judgment. The U.S. District Court found that the prisoner's allegation was not, standing alone, enough to state a claim for cruel and unusual punishment; the prisoner did not dispute information provided in an investigatory report that appropriate clothing was issued and available to prisoners during winter work. The prisoner's claim that he would have been summarily transferred without due process guarantees if he had complained about the weather conditions was speculative and was not properly before the court. (Hutchinson Correctional Facility, Hutchinson, Kansas)

U.S. District Court
CELLS
PRIVACY
SANITATION

White v. Nix, 805 F.Supp. 721 (S.D. Iowa 1992), affirmed, 7 F.3d 120. An inmate brought a civil rights suit against prison officials arising out of his confinement in a "screened" prison cell. The district court found that the placement of the state inmate in the cell did not violate his Eighth Amendment right to be free from cruel and unusual punishment. The cell was in a cellhouse that housed inmates pending investigations for disciplinary infractions. The cell had a toilet, sink, a single bed and a table. A screened wire mesh covers the bars of the cell. The court ruled that any uncleanness in the interior of the cell could have been corrected by the inmate's request for cleaning supplies. In addition, the inmate was only confined to the screened cell on a temporary basis for eleven days. The court also found that the inmate failed to show that his placement in the screened prison cell was for other than reasons of institutional security and safety following his assaultive behavior. The inmate failed to prove that his placement was retaliatory, because of his earlier lawsuits. The inmate also failed to show a violation of his due process rights arising from the officials' 48-hour delay in transferring him from the screened cell after he exhausted his administrative appeals in a disciplinary matter where the defendant did not have a liberty interest in the immediate transfer by reason of an informal prison rule that inmates in summary segregation were not to be transferred until they exhausted their administrative appeals. (Iowa State Penitentiary)

- U.S. District Court
FAILURE TO
PROVIDE CARE
MEDICAL CARE
- Blumhagen v. Sabes, 834 F.Supp. 1347 (D.Wyo. 1993). Prisoners sued prison officials under Section 1983 for alleged failure to take adequate precautions against a tuberculosis outbreak. On the defendants' motion for summary judgment, the district court found that the prisoners failed to show that officials acted with such deliberate indifference as would establish a violation of the Eighth Amendment right to be free from cruel and unusual punishment. The entire prison population was tested when officials learned that one inmate had contracted the disease. A claim that the medical staff should have taken more comprehensive measures in screening and monitoring the inmates' health, amounted, at most, to an allegation of mere negligence. (Wyoming State Penitentiary)
- U.S. District Court
FAILURE TO
PROVIDE CARE
- Casey v. Lewis, 834 F.Supp. 1477 (D.Ariz. 1993). A class of inmates sued Arizona prison officials based on allegations of deliberate indifference to serious medical, dental, and mental health care needs and alleged that female prisoners' equal protection rights were violated with regard to mental health care services. The district court found that the treatment available to seriously mentally ill inmates in the prison system violated the Eighth Amendment. In addition, the unequal treatment of male and female inmates violated the female inmates' equal protection rights in addition to violating their Eighth Amendment rights. The court found that an injunction was appropriate in light of showing that, as a result of economic conditions, the prison system would continue to lock down inmates as an alternative to providing appropriate mental health care. (Arizona Department of Corrections)
- U.S. Supreme Court
SMOKING
SMOKE-FREE
ENVIRONMENT
- Helling v. McKinney, 113 S.Ct. 2475 (1993). A prisoner brought a civil rights action against prison officials alleging violation of his Eighth Amendment rights due to his exposure to environmental tobacco smoke (ETS). The district court entered a directed verdict for the prison officials and the inmate appealed. Appeals courts modified the lower court decision, and the case was presented to the U.S. Supreme Court. The Supreme Court ruled that the inmate's Eighth Amendment claim could be based upon possible future harm to his health, as well as present harm, arising out of exposure to ETS. The Court found that the prisoner had stated a cause of action for violation of his Eighth Amendment rights, alleging that prison officials had, with deliberate indifference, exposed him to levels of environmental tobacco smoke that posed an unreasonable risk of serious damage. The court ordered the lower court, on remand, to consider the circumstances of the inmate's new prison location (where he was not longer exposed to a cellmate who smoked five packs of cigarettes a day), including non-smoking policies of this new location. The Court also ordered the lower court to consider the subjective element, deliberate indifference, in light of the officials' current attitudes and conduct, which may have changed materially because of the transfer of the inmate to a facility that has a smoking policy. (Nevada Department of Prisons)
- U.S. Appeals Court
USE OF FORCE
- Hickey v. Reeder, 12 F.3d 754 (8th Cir. 1993). An inmate brought a civil rights action against jail officials who shot him with a stun gun when he refused to clean his cell. The U.S. District Court entered judgment for the jail officials, and the inmate appealed. The court of appeals, reversing and remanding, found that the use of a stun gun to enforce an order to sweep violated the inmate's constitutional right to be free from cruel and unusual punishment. (Pulaski County Jail, Little Rock, Arkansas)
- U.S. District Court
AIDS
- Johnson v. U.S., 816 F.Supp. 1519 (N.D. Ala. 1993). An inmate brought an action against the Federal Bureau of Prisons and prison officials, alleging violation of his Eighth Amendment right against cruel and unusual punishment. On the defendants' motion for summary judgment, the district court, adopting a report and recommendation of a U.S. Magistrate Judge, found that the inmate failed to show an Eighth Amendment violation concerning his being housed in the same cell with an inmate who was dying from acquired immune deficiency syndrome (AIDS). All examples listed as means by which the inmate feared he may have contracted AIDS were based on unsubstantiated fears and ignorance. In addition, the inmate presented no facts or allegations supporting an inference of deliberate indifference to his serious medical needs or a culpable state of mind on the part of the prison officials. (Federal Correctional Institute, Talladega, Alabama)
- U.S. Appeals Court
SEARCHES
- Jordan v. Gardner, 986 F.2d 1521 (9th Cir. 1993). Female inmates brought an action challenging the constitutionality of prison regulations permitting cross-gender clothed body searches. After granting rehearing en banc, the court of appeals found that the prison policy requiring male guards to conduct random, nonemergency, suspicionless clothed body searches of female prisoners was cruel and unusual punishment that violated the Eighth Amendment. It was noted that the policy inflicted "pain" for Eighth Amendment purposes, where many female inmates had been sexually abused prior to their incarceration, so that unwanted intimate touching by men was likely to cause psychological trauma. In addition, the cross-gender clothed body searches were "unnecessary" for Eighth Amendment purposes, where prison security was not dependent

upon such searches, and the searches did not ensure equal employment opportunities for male guards. The determination that the searches violated the inmates' Eighth Amendment rights warranted a permanent injunction that prohibited nonemergency, suspicionless clothed body searches by male guards. (Washington Corrections Center for Women)

U.S. Appeals Court
USE OF FORCE

Norman v. Taylor, 9 F.3d 1078 (4th Cir. 1993). An inmate sued a deputy alleging excessive force in violation of the Eighth Amendment. The U.S. District Court granted summary judgment for the deputy finding that the inmate did not adequately refute the deputy's statement that the inmate was causing a disturbance so that force was necessary, and that the amount of force was not excessive. The inmate appealed. The appeals court, reversing and remanding, found that a genuine issue of material fact as to whether the inmate was causing a disturbance justifying the use of force precluded summary judgment in favor of the deputy. According to the court, the actions of the deputy in swinging keys at the inmate's face to stop him from smoking could clearly support a finding that he acted maliciously and sadistically to cause harm and satisfied the subjective component of an Eighth Amendment excessive force claim. Furthermore, the harm alleged by the inmate which included initial and lingering pain to his hand, physical injury sustained including swelling and decreased mobility of his hand, and psychological injury caused from threats by the deputy, were beyond the de minimis level. (Norfolk County Jail, Virginia)

U.S. Appeals Court
DOUBLE CELLING

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 that double celling did not rise to a level of cognizable Eighth Amendment deprivation. The inmate failed to present any evidence that he had sustained serious or significant physical or emotional injury because of such conditions. (Portsmouth City Jail, Virginia)

U.S. District Court
CELLS
PLUMBING

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

1994

U.S. District Court
INJURY

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

U.S. District Court
MEDICAL CARE

Brown v. Thompson, 868 F.Supp. 326 (S.D. Ga. 1994). An inmate brought a Section 1983 action against a warden and prison medical staff for deliberate indifference to his medical needs. On the defendants' motions for summary judgment, the district court found that the inmate's medical treatment for months before being denied treatment on a single day did not show the deliberate indifference required to support the inmate's claim under the Eighth Amendment. (Coastal Correctional Institute, Georgia)

U.S. District Court
MEDICAL CARE

Brownlow v. Chavez, 871 F.Supp. 1061 (S.D.Ind. 1994). A prisoner brought a Section 1983 action against a prison physician alleging the physician failed to provide appropriate medical care over the past several years. On the physician's motion for summary judgment the district court found that the prison doctor was not deliberately indifferent to the prisoner's medical needs in violation of the Eighth Amendment, in view of evidence that the doctor played a principal role in providing a steady flow of medical services to the

prisoner who had a knee injury. The prisoner was also seen by an orthopedic specialist on many occasions. The court noted that medical malpractice, inadvertent failure to provide adequate medical care, or simple negligence does not amount to a violation of the Eighth Amendment. (Indiana Reformatory)

U.S. Appeals Court
RESTRAINTS
USE OF FORCE

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
USE OF FORCE

Davis v. Moss, 841 F.Supp. 1193 (M.D.Ga. 1994). A former inmate brought a Section 1983 action against correctional officers alleging cruel and unusual punishment in violation of the Eighth Amendment in connection with defendants' treatment during a riot. The district court found that the inmate failed to establish that a correctional officer had punched him in the face or struck his legs with a night stick. However, the inmate proved by a preponderance of evidence that a correctional officer used excessive force in violation of the inmate's Eighth Amendment rights when the officer shoved the inmate down fire escape stairs during the course of the riot. The inmate was handcuffed and neither resisted nor threatened the officer. (Rivers Correctional Institution, Hardwick, Georgia)

U.S. District Court
CAPITAL
PUNISHMENT

Fierro v. Gomez, 865 F.Supp. 1387 (N.D. Cal. 1994). California inmates who had been sentenced to death brought an action on behalf of themselves and all others similarly situated, challenging the constitutionality of California's method of execution by lethal gas. The district court found that the California inmates who had been sentenced to death had standing to challenge the constitutionality of California's method of execution by lethal gas, even though they could have elected to be executed by lethal injection instead. Where inmates had refused to elect the method of execution, their executions, if carried out, would be by administration of lethal gas, and their challenge to the method of execution was therefore justifiable. The court also found that California's method of execution by lethal gas is unconstitutional cruel and unusual punishment under the Eighth Amendment. Evidence strongly suggests that a condemned inmate is likely to suffer intense physical pain during the period of consciousness, which is likely to continue anywhere from 15 seconds to one minute from the time the gas strikes the inmate's face, and that there is a substantial risk that consciousness will persist for up to several minutes. Evidence of pain, when coupled with the overwhelming evidence of societal rejection of lethal gas as a method of execution, renders its administration unconstitutional. (San Quentin State Prison, California)

U.S. District Court
FAILURE TO
PROTECT
TEMPERATURE

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 no Eighth Amendment violation was shown in failing to protect the plaintiff inmate or in conditions of the segregation unit. While inmates are entitled to reasonable protection from harm, prison officials cannot be expected to eliminate the possibility of all attacks. In addition, the alleged lack of heat in the prison segregation unit did not amount to hardship where, during the time in question, the outdoor temperatures ranged from 57 to 84 degrees Fahrenheit. (Graham Correctional Center, Illinois)

U.S. District Court
FAILURE TO
PROTECT
SECURITY
VIOLENCE

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

U.S. Appeals Court
EXERCISE

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 received only 30 minutes of out-of-cell exercise during a three-month period in which he was confined in the county jail was sufficient to state a civil rights claim against jail officials based on a violation of the prohibition against cruel and unusual punishment. (Custer County Jail, Oklahoma)

U.S. Appeals Court
USE OF FORCE

Howard v. Barnett, 21 F.3d 868 (8th Cir. 1994). A prisoner sued a prison official alleging use of excessive force. The U.S. District Court entered judgment on a jury verdict for the prisoner and the official appealed. The appeals court, reversing and remanding, found that a violation of the Eighth Amendment required a finding that force was applied "maliciously and sadistically for the very purpose of causing harm." Force that was excessive within the meaning of the Eighth Amendment would be compensable if it caused the prisoner actual injury, even if the injury was not of great significance. (Missouri)

U.S. District Court
SMOKE

Jackson v. Berge, 864 F.Supp. 873 (E.D. Wis. 1994). An inmate brought a Section 1983 action for injunctive and monetary relief against prison officials for allegedly violating his civil rights when they placed him in a cell with a prisoner who smoked. The prison officials' filed a motion for summary judgment. The district court, granting the motion, found that the inmate did not satisfy the objective component of the cruel and unusual punishment test based on his confinement with a cellmate who smoked. He produced no competent evidence that he had a serious medical condition, or that second-hand smoke caused or aggravated any illness. In addition, he produced no evidence of the level of environmental tobacco smoke in his cell. The court also found that the inmate failed to establish that the prison officials acted with deliberate indifference in violation of the prohibition on cruel and unusual punishment in placing him in a cell with a roommate who smoked. Emergency overcrowding required housing in double rooms and the cell was designated a nonsmoking cell. Furthermore, the officials investigated the inmate's complaints, but they found no evidence of any smoking in the cell. They also provided the inmate with medical care every time he complained of chest pains or breathing problems. (Fox Lake Correctional Institution, Fox Lake, Wisconsin)

U.S. District Court
EXERCISE

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
INJURY
WORK

Lee v. Sikes, 870 F.Supp. 1096 (S.D.Ga. 1994). A prison inmate who was attacked by a boar hog while working at assigned duties in the prison's hog farm operation brought a civil rights suit against the warden and the supervisor of the operation. The district court found that the prison inmate failed to show "deliberate indifference" by the supervisor of the hog operation or prison warden, and thus failed to establish an Eighth Amendment violation. The inmate relied almost entirely on a list of safety rules and the supervisor's ignorance of the rules, but there was no evidence indicating deliberate indifference to the rules. In addition, the inmate was protected by the Eighth Amendment, which provides explicit protection to prisoners against cruel and unusual punishment, and could not bring a separate, independent claim for the same behavior by prison officials based on substantive due process. (Rogers Correctional Institution, Georgia)

U.S. District Court
MEDICAL CARE

Lowrance v. Coughlin, 862 F.Supp. 1090 (S.D.N.Y. 1994). A Muslim prisoner brought a Section 1983 action against various prison officials alleging violation of the First, Eighth, and Fourteenth Amendments. The district court found that prison officials violated the Eighth Amendment with respect to delaying surgery on the inmate's left knee, entitling the inmate to damages as compensation for pain that could have been reduced between the initial diagnosis and an operation, which did not take place for nearly two years. The prison medical staff had actual notice of the injured knee as reflected in prison medical records, yet failed to provide adequate care. The inmate was transferred from one prison to another on the eve of surgery in retaliation for exercising his protected religious and free speech right, despite the prison officials' having knowledge of the inmate's medical need, and the inmate was deprived of adequate postoperative treatment. (Green Haven Correctional Facility, and other facilities, New York)

U.S. Appeals Court
FOOD
NOISE
SANITATION
USE OF FORCE

Lunsford v. Bennett, 17 F.3d 1574 (7th Cir. 1994). Prisoners brought a civil rights action against prison and county officials alleging violations of the Eighth and Fourteenth Amendments. The U.S. District Court entered summary judgment for the officials, and the prisoners appealed. The appeals court, affirming the decision, found that the prisoners' claims that they were denied basic hygiene items, subjected to loud noises over the intercom and served poorly prepared food did not, either individually or collectively, establish an Eighth Amendment violation. Shackling the prisoners to their cells so that trustees could mop up water in the cell block which prisoners had flooded did not constitute an Eighth Amendment violation. Pouring a bucket of water over the head of an inmate who was shackled to his cell during the cleanup of the cell block did not rise to a level of Eighth Amendment violation. Institutional security was threatened, prisoners and guards were talking "trash" to one another, some prisoners were splashing guards with water, and prison officials were obliged to restore order and control. Although pouring a bucket of water over the head of a prisoner who was already standing ankle deep in water

might be seen as unnecessary in retrospect, it was a minor use of force that did not offend the conscience. (Elkhart County Security Center, Indiana)

U.S. District Court
HARASSMENT

Meadows v. Gibson, 855 F.Supp. 223 (W.D. Tenn. 1994). A prisoner brought a Section 1983 action against a prison counselor for verbal harassment. The district court found that a prison counselor's mere verbal harassment of the prisoner does not inflict pain so as to amount to obduracy and wantonness required for violation of the cruel and unusual punishment clause. (Shelby County Correctional Center, Tennessee)

U.S. District Court
FOOD

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. The court found that the inmate was not subject to cruel and unusual punishment by the fact that food was transported from the kitchen to cells on carts, resulting in food being cold when it was served, despite the speculation of the risk the food could become contaminated with bacteria. (Shelby County Jail, Tennessee)

U.S. District Court
FAILURE TO
PROTECT
USE OF FORCE

Shearin v. Correction Officer Pennington, 867 F.Supp. 1250 (E.D.Va. 1994). A state inmate brought a Section 1983 action against a corrections officer and other corrections employees, alleging that the officer committed assault and battery against the inmate and that the employees failed to protect the inmate, thereby subjecting the inmate to cruel and unusual punishment in violation of the Eighth Amendment. Both parties moved for summary judgment. The district court found that the inmate was not subjected to cruel and unusual punishment under the Eighth Amendment by the actions of the corrections officer in thrusting a metal window rod through the bars of the inmate's cell and charging at the inmate, after the inmate threw dissolved human waste onto the officer from his cell. The inmate was not subjected to the use of excessive force when the officer verbally provoked the inmate; the inmate was subjected to no further physical contact. There was no evidence that the inmate was physically harmed, and the officer acted to defend himself, rather than with a culpable state of mind. In addition, the inmate was not subjected to cruel and unusual punishment under the Eighth Amendment by the actions of a higher-ranking officer after the incident. The officer visited the inmate a few minutes after the incident and immediately presented the inmate to a physician for treatment. The officer protected the inmate from further harm, and moved to discipline the lower-ranking officer. (Powhatan Correctional Facility, Virginia)

U.S. Appeals Court
MEDICAL CARE

Sherrer v. Stephens, 50 F.3d 496 (8th Cir. 1994). An inmate brought a Section 1983 action against prison medical staff members for being deliberately indifferent to his medical needs under the Eighth Amendment in treating his broken index finger. The U.S. District Court granted summary judgment for the prison medical staff members and the inmate appealed. The appeals court, affirming the decision, found that the treatment of the inmate's broken finger did not rise to the level of deliberate indifference based on evidence that he received painkillers, instructions to apply ice and perform motion therapy, x-rays, and examination by orthopedists. (Delta Regional Unit, Arkansas Department of Correction)

U.S. Appeals Court
CROWDING
REMEDIES

Shifrin v. Fields, 39 F.3d 1112 (10th Cir. 1994). An inmate brought a civil rights action claiming that eligibility requirements of the Oklahoma Prison Overcrowding Emergency Powers Act violated his rights to equal protection, due process, and to be free from cruel and unusual punishment. The U.S. District Court entered judgment against the inmate and he appealed. The appeals court, affirming the decision, found that violent offenders and repeat offenders were not members of any suspect class, and the Act was rationally related to legitimate penological concerns. The court found that the inmate had no constitutionally protected liberty interest in shortening his sentence through emergency time credits. Requiring a repeat offender who is incarcerated for a violent offense to remain in overcrowded prison conditions without the benefit of emergency time credits was not cruel and unusual punishment. (Oklahoma State Prison)

U.S. Appeals Court
DISCIPLINE

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

U.S. District Court
TOILETS

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. (Virginia State Prison)

U.S. Appeals Court
MEDICAL CARE

Walker v. Shansky, 28 F.3d 666 (7th Cir. 1994), affirmed, 51 F.3d 276. A state inmate brought an action against medical personnel and prison officials alleging that two forced injections of tranquilizing drugs and his assignment to long-term segregation violated his constitutional rights. The U.S. District Court entered summary judgment for the officials and the inmate appealed. The appeals court found that the administration to the inmate of the forced injections did not violate a prohibition against cruel and unusual punishment where the inmate was engaging in explosive and assaultive behavior and a psychiatrist concluded that the inmate's behavior was a result of a borderline personality disorder. The inmate's history of obduracy with respect to medical advice combined with the self-destructive behavior led the psychiatrist to conclude that the inmate was irrational when making a decision concerning his health and welfare. (Centralia Correctional Center, Illinois)

U.S. Appeals Court
USE OF FORCE

White v. Holmes, 21 F.3d 277 (8th Cir. 1994). An inmate brought an action against a prison librarian and supervisor to recover for injuries caused by an altercation with the librarian. The U.S. District Court denied a summary judgment motion by the librarian and supervisor, and they appealed. The court of appeals, reversing and remanding, found that the prison librarian did not commit cruel and unusual punishment by throwing keys at the inmate, putting her hands on his face, and flailing her arms at his head. The amount of force used was de minimis, and the librarian's behavior was not repugnant, diabolic, or inhuman. (Missouri State Penitentiary)

U.S. Appeals Court
HARASSMENT
USE OF FORCE

Wilkins v. Moore, 40 F.3d 954 (8th Cir. 1994). Prison guards appealed the denial by the U.S. District Court of the guards' motion for summary judgment in a civil rights action brought by a prisoner against them. The appeals court, affirming the decision, found that the jury could draw reliable inferences as to whether the prison guards' use of force on the prisoner could have been thought to be necessary, or instead exceeded the amount of force that was justified under the circumstances. The prison guards were not entitled to a defense of qualified immunity on a deprivation of clothing claim. The prison guards placed the inmate naked in a strip cell for 22 hours, where the guards allegedly verbally and physically abused the inmate continuously. The district court determined that the inmate's assault claim against the guards was a fact issue for trial, and the prison guards did not appeal this determination. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
RESTRAINTS

Williams v. Vidor, 17 F.3d 857 (6th Cir. 1994). An inmate brought a civil rights action against a prison officer and deputy warden alleging that he was subject to cruel and unusual punishment and denied his right to equal protection when he was shackled to his bed for 73 hours. The U.S. District Court granted summary judgment for the officer and deputy warden, and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the officer who carried out the order to place the inmate in shackles had qualified immunity. He did not make the decision to place the inmate in restraints nor to keep them on for any particular period of time, and he did carry out his duty to check on the inmate periodically. However, genuine issues of material fact existed as to whether the deputy warden was responsible for maintaining the inmate in shackles for 73 hours, precluding summary judgment. (Ionia Maximum Correctional Facility, Michigan)

U.S. District Court
CELLS
SANITATION
TEMPERATURE

Wilson v. Schomig, 863 F.Supp. 789 (N.D. Ill. 1994). A prisoner brought a civil rights action against prison officials based on alleged violations of the Eighth Amendment. The district court found that the inmate's claims that his cell contained dirt, dust, and roaches, and that the ceiling leaked during rainstorms did not allege conditions sufficiently serious to violate the objective standard of cruel and unusual punishment and did not state a claim based on the Eighth Amendment. However, the prison officials were not entitled to qualified immunity from the inmate's claim that they failed to clean up or allowed him to clean up human feces from his cell and a claim that the temperature in his cell fell below freezing during three days in January. (Stateville Correctional Center, Joliet, Illinois)

1995

U.S. District Court
THREATS

Arce v. Banks, 913 F.Supp. 307 (S.D.N.Y. 1996). An inmate brought a § 1983 action against a prison nurse, alleging that she violated his First and Eighth Amendment rights by yelling at him and threatening to punish him when he was discussing upcoming surgery. The defendant moved for dismissal and the court granted the motion. The incident occurred when the inmate was discussing the method to be used to remove a cyst-like growth from his forehead with the surgeon. The inmate claimed that the defendant became angry at him when he questioned the surgeon about the procedure, that she yelled at him and told him "you have no business coming here to ask questions on how the surgery will be perform [sic] by the surgeon." The inmate asked for \$500,000 in monetary damages and reasonable attorney fees. The court found that the allegations did not rise to the level of a First Amendment violation, that the inmate's health condition was not sufficiently serious to form the basis of an Eighth Amendment claim, and that the nurse was entitled to qualified immunity. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
CONDITIONS
MEDICAL CARE

Aswegan v. Henry, 49 F.3d 461 (8th Cir. 1995). A prisoner sued prison officials for alleged violation of the Eighth Amendment based on aggravation of his asthma which allegedly resulted from his being placed in a small shower stall during cell shakedown. The U.S. District Court granted an injunction for the prisoner, and the prison officials appealed. The appeals court, reversing the decision, found that the prisoner's bare assertion that being placed in the stall during cell shakedowns aggravated his asthma was insufficient to support a claim that being placed in the stall was a violation of his rights under the Eighth Amendment. The appeals court found that even if prison officials were aware of the inmate's various medical complaints, evidence presented no objective reason for them to believe that confinement in the shower stall during a cell shakedown would aggravate his breathing problems. On consultation with prison medical personnel, officials were told that the inmate had no medical need to avoid that type of confinement. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. District Court
CLOTHING
READING MATERIALS
WORK

Campbell-El v. District of Columbia, 881 F.Supp. 42 (D.D.C. 1995). A prisoner brought a civil rights action against prison officials, alleging violation of his Eighth Amendment rights. The district court found that the prisoner's allegation that his access to reading materials was severely restricted while he was incarcerated, that he received inappropriate winter clothing for his one hour period of outdoor recreation and that he was not allowed to engage in work was insufficient to state a claim for cruel and unusual punishment in violation of the Eighth Amendment, absent a showing of the extent and severity of the alleged deprivations. (Maximum Security Facility at Lorton, District of Columbia)

U.S. District Court
MEDICAL CARE

Coleman v. Wilson, 912 F.Supp. 1282 (E.D.Cal. 1995). Inmates challenged the adequacy of mental health care provided at institutions operated by the California Department of Corrections, alleging that the inadequacies were cruel and unusual punishment in violation of the Eighth Amendment. The district court reviewed the findings and recommendations of the chief magistrate judge after objections were filed by the defendants. The court found that evidence supported the magistrate's findings and recommendations regarding many aspects of the Department's mental health services, and ordered that a special master be appointed to monitor the Department's compliance with court-ordered injunctive relief. The court found that there were six components of a minimally-adequate prison mental health care delivery system under the Eighth Amendment: (1) a systematic program for screening and evaluating inmates to identify those in need of mental health care; (2) a treatment program that involves more than segregation and close supervision of mentally ill inmates; (3) employment of a sufficient number of trained mental health professionals; (4) maintenance of accurate, complete and confidential mental health treatment records; (5) the administration of psychotropic medication only with appropriate supervision and periodic evaluation; and (6) a basic program to identify, treat and supervise inmates at risk for suicide. The court found that evidence supported findings of deficiencies in all of these areas. The Department's mental illness screening procedures were based on self-reporting, use of records of prior hospitalization and/or past or current use of psychotropic medications, exhibition of bizarre behavior, and requests for care. The court found these procedures were used haphazardly and depended for efficacy on incomplete or nonexistent medical records, or observations of custodial staff who were inadequately trained to recognize the signs and symptoms of mental illness. The court found that medication management for mentally ill inmates was constitutionally deficient because: computers were not networked preventing inmate medication to be tracked when an inmate was transferred; some inmates were receiving timely medication and appropriate monitoring while others were not; and some medications that were effective in the treatment of serious mental disorders were not available. The court found deficiencies with the medical records maintained by the Department, including: disorganized, untimely and incomplete filing of medical records; incomplete or nonexistent treatment plans; and failure to send medical records with inmates when they were transferred. The court noted that it was the Department's responsibility to take reasonable steps to implement policies that would aid in obtaining medical information from counties from which inmates were transferred. The court found that policies and practices regarding the housing of mentally ill inmates in administrative segregation and segregated housing units (SHU) violated the Eighth Amendment rights of those inmates. Evidence supported the finding that regulations providing for case review and psychological assessment of segregated inmates had little or no effect on actual practices. (California Department of Corrections)

U.S. District Court
CELLS
FOOD

Demaio v. Mann, 877 F.Supp. 89 (N.D.N.Y. 1995). An inmate brought a Section 1983 action against officials at a New York correctional facility. On cross-motions for summary judgment, the district court found that the inmate had no protected liberty interest in confinement in an unshielded cell. The addition of a plexiglass shield to the cell did not inflict cruel and unusual punishment on the inmate where the shield did not interfere with the air circulation and the cell was, in all other respects, identical to the standard cell in which the inmate had been previously housed. The court found that a genuine issue of material fact precluded summary judgment on the issue of whether deprivation of the inmate's food was "sufficiently serious" to trigger Eighth Amendment concerns based on evidence that the inmate spit on a correction officer and that after the spitting incident correction officers deprived the inmate of his meals for two days. (Shawangunk Correctional Facility, New York)

- U.S. District Court
PLUMBING
SANITATION
TOILETS
TOTALITY OF
CONDITIONS
- Geder v. Godinez, 875 F.Supp. 1334 (N.D. Ill. 1995). A prisoner brought a civil rights action against several prison officials alleging cruel and unusual conditions of confinement. On a motion by the defendants for summary judgment, the district court found that prison conditions, including the alleged presence of defective pipes, sinks and toilets, improperly cleaned showers, a broken intercom system, stained mattresses, accumulated dust and dirt, and infestation by roaches and rats, viewed separately or cumulatively, were insufficient to establish deprivation of human need sufficient to constitute a violation of the Eighth Amendment. No violation was shown absent a showing that prison officials knew of and consciously disregarded an excessive risk to inmates' health or safety. Prison conditions are not unconstitutional under the Eighth Amendment simply because they are restrictive or harsh. (Stateville Correctional Center, Joliet, Illinois)
- U.S. Appeals Court
CAPITAL
PUNISHMENT
- Ingram v. Ault, 50 F.3d 898 (11th Cir. 1995). A death row inmate brought a civil rights action alleging that execution by electrocution violated the Eighth 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 the death row inmate was not entitled to a temporary restraining order because he failed to demonstrate the substantial likelihood of success on the merits of his claim that electrocution was cruel and unusual punishment. (Georgia Diagnostic & Classification Center, Jackson, Georgia)
- U.S. Supreme Court
CAPITAL
PUNISHMENT
- Lackey v. Texas, 115 S.Ct. 1421 (1995). A petitioner raised the question of whether executing a prisoner who had already spent 17 years on death row violates the Eighth Amendment's prohibition against cruel and unusual punishment. A petition for a writ of certiorari was denied. The U.S. Supreme Court noted that, although the importance and novelty of the question presented by this certiorari petition were sufficient to warrant a review by the Court, those factors also provided a principled basis for postponing consideration of the issue until after it has been addressed by other courts. The Court also noted that a denial of certiorari does not constitute a ruling on the merits. Often, a denial of certiorari on a novel issue will permit the state and federal courts to "serve as laboratories in which the issue receives further study before it is addressed by the Supreme Court." (Texas)
- U.S. Appeals Court
FAILURE TO
PROTECT
- MacKay v. Farnsworth, 48 F.3d 491 (10th Cir. 1995). A prison inmate brought a Section 1983 action against prison guards, alleging that they violated his Eighth Amendment right to be free from cruel and unusual punishment by not physically intervening in a fight between him and another inmate. The U.S. District Court granted the guards' motion for summary judgment and the inmate appealed. The appeals court, affirming the decision, found that the requisite mental state in the prisoner's Section 1983 action alleging that prison officials did not respond with physical use of force to protect the inmate from harm by another inmate was that of deliberate indifference, rather than that of malicious and sadistic. In addition, there was no "deliberate indifference" on the part of prison officials who failed to physically intervene in the fight between the plaintiff inmate and another inmate who had a weapon and, thus, the plaintiff could not recover under Section 1983. The guards were successful in attempting to break up the fight verbally. The guards observed that the plaintiff and other inmate were evenly matched and that the other inmate's weapon was ineffective, and the guards called for additional staff and medical personnel and thus were preparing to intervene once sufficient staff were available in accordance with prison policy. (Utah State Prison)
- U.S. District Court
CLOTHING
FAILURE TO
PROTECT
MEDICAL CARE
- McCorkle v. Walker, 871 F.Supp. 555 (N.D.N.Y. 1995). An inmate brought a civil rights action against various prison officials alleging violation of the Eighth Amendment. The district court found that the Eighth Amendment prohibition against cruel and unusual punishment was not violated either by the inmate's alleged lack of a change of underwear for 15 days or the failure to transfer the inmate after psychiatric personnel employed by the Office of Mental Health suggested that a transfer might reduce some of the inmate's stress. In addition, there was no violation of the Eighth Amendment prohibition against cruel and unusual punishment in the exposure of the inmate to tuberculosis (TB), allegedly while working in the prison infirmary. Prison officials demonstrated that they responded reasonably to the exposure, and it was undisputed that the inmate had not suffered, and was unlikely to ever suffer, an active case of TB. (Auburn Correctional Facility, New York)
- U.S. District Court
BEDDING
TEMPERATURE
- Maguire v. Coughlin, 901 F.Supp. 101 (N.D.N.Y. 1995). A former inmate sued corrections officials to recover for alleged verbal and physical abuse, inadequate cell conditions, and transfers. The district court granted summary judgment for the defendants, in part, and denied it in part. The court found that the alleged verbal and physical abuse was not cruel and unusual punishment since officers did not apply force maliciously and sadistically to cause harm and did not use more than de minimus force. The court found that questions of fact precluded summary judgment on the claim that the former inmate's confinement in a cell without bed linens violated the Eighth Amendment. Because an inmate's Eighth Amendment right to adequate cell conditions was clearly established at the time of the alleged violations, the court held that the defendants were not entitled to qualified immunity. (Downstate Correctional Facility, New York)

U.S. District Court
FIRE SAFETY
PLUMBING
SANITATION

Masonoff v. DuBois, 899 F.Supp. 782 (D.Mass. 1995). Prison inmates filed a class action suit against prison officials alleging that conditions of confinement violated their rights under the Eighth Amendment. The district court granted summary judgment, in part, for the inmates. The court found that the use of chemical toilets violated the Eighth Amendment rights of the inmates where the use and emptying of the toilets resulted in extremely unsanitary conditions, the toilets caused an unbearable stench, and prison inmates suffered numerous health problems caused by the use of toilets including nausea, burns, and rashes. The court also found that there were genuine issues of material fact as to whether prison officials acted with deliberate indifference regarding chemical toilets, precluding summary judgment. The court denied summary judgment for the prison officials with regard to fire safety issues raised by the inmates. Inmates alleged fire hazards caused by the lack of a functioning sprinkler system and the lack of automatic locks on cell doors, which are required by a state building code. Prison officials responded that the facility had implemented a rigorous fire safety program which mitigated any dangers imposed by these deficiencies. The court noted that while it may look to state codes in its effort to determine society's standard of decency, such standards do not necessarily reflect constitutional minima. The court found that the inmates' assertion that their exposure to asbestos fibers causes cancer stated a cognizable Eighth Amendment claim, precluding summary judgment. The court held that genuine issues of material fact precluded summary judgment on the allegation that pest or vermin infestation created inadequate sanitation in violation the Eighth Amendment. The court noted that infestation of vermin such as rats, mice, birds, and cockroaches in the prison is inconsistent with adequate levels of sanitation required by the Eighth Amendment. (Southeast Correctional Center, Massachusetts)

U.S. Appeals Court
SAFETY
SANITATION

Morrisette v. Peters, 45 F.3d 1119 (7th Cir. 1995). An inmate sued a prison and prison officials for violations of Section 1983 based on confinement stemming from alleged drug possession in prison. The U.S. District Court granted summary judgment to the defendants and the inmate appealed. The appeals court found that the prison officials could not be liable under the Eighth Amendment for denying humane conditions of confinement absent a showing that the officials were even remotely aware of the alleged unsanitary conditions in the cell in which the inmate was confined. Even if the guards were aware of the exposed wires in the cell and failed to fix the problem during the inmate's brief stay in controlled segregation, the guards were only guilty of negligence which would not support an Eighth Amendment claim. (Pontiac Correctional Facility, Illinois)

U.S. District Court
CONDITIONS
FIRE SAFETY

Nettles v. Griffith, 883 F.Supp. 136 (E.D. Tex. 1995). A prisoner who was placed in administrative segregation without a hearing and was injured when he exited his cell after it was set on fire, brought a Section 1983 action against the county sheriff and other officials. The district court found that the assignment of the prisoner to administrative segregation in a section of the jail designed primarily for the mentally imbalanced did not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Although the prisoner was injured when exiting his cell after it was set on fire by other prisoners, no jail official perceived that the prisoner was subject to a serious risk of harm from fire, since fires were ubiquitous in the jail and had not previously caused serious injuries. (Jefferson County Detention Center, Beaumont, Texas)

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE

Sheldon v. C/O Pezley, 49 F.3d 1312 (8th Cir. 1995). A state prisoner sued corrections officers alleging that he had been subjected to cruel and unusual punishment in violation of the Eighth Amendment. The complaint was dismissed by the U.S. District Court and the prisoner appealed. The appeals court, affirming the decision, found that the inmate failed to show that he was subjected to cruel and unusual punishment by the failure to provide medical care after his wrist was allegedly injured during the forced return to his cell from the shower area. The inmate was immediately asked whether he wanted medical assistance and the only reason he did not receive it was that he refused to be handcuffed for transfer to an area where a nurse would have better light to examine him. The nerve inflammation allegedly suffered was not so obvious that a layperson would easily recognize the necessity for a doctor's care, and the inmate could have gone on sick call at any time. He waited 12 days before doing so and then was seen four times in the infirmary. The court found that the use of a "pain compliance hold" on the inmate, without actual application of force, was justified to maintain order in the institution and to maintain the safety of prison personnel and inmates during a strip search, after the inmate refused a direct order to return to his cell from the shower area. The use of force did not constitute an infliction of cruel and unusual punishment. (Iowa State Penitentiary)

U.S. District Court
CONDITIONS
SANITATION
VENTILATION
CLOTHING
EXERCISE

Stone-El v. Sheahan, 914 F.Supp. 202 (N.D.Ill. 1995). A pretrial detainee brought a civil rights suit against a sheriff, the executive director of a county department of corrections, and a jail superintendent, in their official and individual capacities, alleging violation of his due process rights. The district court dismissed the suit, finding that the detainee failed to allege that the defendants personally caused the conditions at the jail, as required for the imposition of individual capacity liability. The court found that the officials could not limit the number of pretrial detainees assigned to the jail, nor appropriate funds to improve conditions, and it was not alleged that they intentionally withheld available resources that could have improved

conditions. The court found that even dramatic restrictions on outdoor exercise do not violate a detainee's due process rights as long as the detainee has ample opportunity for indoor activity. The detainee had alleged that vermin infested the jail, but the court found that keeping vermin under control in jails is a monumental task, and absent deliberate indifference, such conditions do not violate due process. Because the detainee failed to allege any harm caused by alleged poor ventilation, he failed to allege conditions serious enough to violate his due process rights. The court similarly found that the detainee's allegations fell short in the areas of excessive noise, floor-sleeping, hygiene items, sanitation, and security. (Cook County Jail, Illinois)

U.S. District Court
CROWDING
FLOOR-
SLEEPING
FOOD
HYGIENE
MEDICAL CARE
SANITATION

Summers v. Sheahan, 883 F.Supp. 1163 (N.D. Ill. 1995). An inmate brought a pro se action against prison officials seeking compensatory and punitive damages for alleged violations of his constitutional rights. On the defendant officials' motion to dismiss, the district court found that the inmate's allegation that he contracted bronchitis because he did not receive his heart medicine failed to state a claim under the Eighth Amendment, absent an allegation that officials were aware of his condition or that they intentionally withheld his medication. The court found that the failure of the Department of Corrections to authorize the inmate's overnight stay at a county hospital did not amount to a constitutional violation, as the inmate was placed in the Department's hospital facility where he was observed overnight as recommended by the county physician. Absent allegations that the inmate, who was allegedly forced to sleep on cold floors for approximately two months, was placed in a cold cell for the purpose of punishment rather than as an inevitable consequence of overcrowding, the two-month period alleged had to be viewed as merely a "temporary inconvenience" which did not violate the inmate's Eighth Amendment rights. The court also found that although the alleged provision of vermin-infested food to the inmate rose to a level of a constitutional infraction, the inmate's indication that prison officials were "responsible" for a policy regarding all the conditions alleged in the complaint was insufficient to infer deliberate indifference on the part of the officials. The inmate's claim that he was forced to stay in an unsanitary, germ and bacteria-filled environment and that showers were filthy and clogged up failed to state a claim for a violation of the Eighth Amendment. The inmate's claim that he filed a grievance requesting to speak to a paramedic concerning his heart medication and diet and he did not obtain a response, would not support an inference that officials knew of and disregarded an excessive risk to the health and safety of the inmate. (Cook County Department of Corrections, Illinois)

U.S. District Court
DISCIPLINE
FOOD

Williams v. Coughlin, 875 F.Supp. 1004 (W.D.N.Y. 1995). A prison inmate sued a prison and officials under Section 1983 for a violation of the Eighth Amendment as a result of deprivation of food as punishment for a disciplinary infraction (refusal to return food trays). The district court found that there were genuine issues of material fact, precluding summary judgment for either the prisoner or the prison officials, as to whether deprivation of five consecutive meals over a period of two days was sufficiently serious to support a claim of Eighth Amendment violation. (Southport Correctional Facility, New York)

1996

U.S. District Court
SMOKE
SMOKE-FREE
ENVIRONMENT

Crowder v. Kelly, 928 F.Supp. 2 (D.D.C. 1996). Inmates who were nonsmokers brought an action against prison officials alleging they were subjected to high levels of environmental tobacco smoke (ETS) in violation of the Eighth Amendment. The district court granted the inmates' motion for a preliminary injunction, finding that the inmates were likely to succeed on their claim and that they would suffer irreparable injury if their exposure to ETS was not enjoined. The inmates had described a pattern of disregard for the prison's non-smoking policy by both the prison population and the corrections department. According to the court, evidence indicated that the inmates' involuntary exposure to ETS could have both long-term and short-term effects on their health, including coughing, chest discomfort, phlegm production and elevated risk of lung cancer and heart disease. (District of Columbia, Lorton Correctional Complex, Virginia)

U.S. District Court
CLOTHING

Davidson v. Coughlin, 920 F.Supp. 305 (N.D.N.Y. 1996). A state prison inmate filed a § 1983 action against prison officials alleging conditions that violated the Eighth Amendment. The court found that summary judgment for the defendants was precluded on the inmate's claim that prison officials failed to provide him with adequate winter clothing. The officials alleged that the inmate was provided with the clothing mandated by state corrections directives; the inmate alleged that they failed to provide inmates with various items of clothing, including winter underwear, winter boots or galoshes, sweaters, gloves, scarves and wool socks. The inmate alleged that some of these items were available for purchase only. (Auburn Correctional Facility, New York)

U.S. District Court
DOUBLE-CELLING

El Tabech v. Gunter, 922 F.Supp. 244 (D.Neb. 1996). Inmates sued corrections officials alleging that the practice of double celling inmates with random cell assignment violated the Eighth Amendment. The district court ordered remedial measures and the officials appealed; the appeals court remanded the case for certification of findings. On remand, the district court held that evidence was sufficient to find that prison officials actually knew of and disregarded the substantial risk to the safety of inmates posed by making random double cell assignments without the use of classification information and without determining inmate compatibility.

The court noted that evidence supported the conclusion that the level of violence at the penitentiary, including violence in double cells, posed a substantial risk of harm to inmates. The court found that remedial measures, such as cell moves, protective custody, or posting staff on a gallery, did not render the decision not to use classification information reasonable. The court found that evidence established that wardens were personally responsible for the failure to use classification information before making cell assignments. (Nebraska State Penitentiary)

U.S. Appeals Court
TEMPERATURE
SANITATION
VENTILATION

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)

U.S. Appeals Court
NOISE
VENTILATION
LIGHTING
TEMPERATURE
HARASSMENT

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The appeals court found that a disputed issue of material fact as to noise in the prison--whether there was constant yelling, screaming and banging--precluded summary judgment. The court also found that allegations that the prison had inadequate ventilation and air flow might state a claim for cruel and unusual punishment if the conditions undermine the health of inmates and the sanitation of the prison. The court found that material issues of fact as to allegations that food was spoiled and water was foul precluded summary judgment. Confinement in a 54 square foot cell did not violate the inmate's right to be free from cruel and unusual punishment. Although the average temperature of the inmate's cell tended to be either well above or well below room temperature, the inmate's constitutional rights were not violated. The court ruled that the practice of requiring inmates to live in constant illumination results in unconstitutional physical and psychological harm. (Oregon State Prison)

U.S. District Court
MEDICAL CARE
SMOKE

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
PLUMBING
TOILETS

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
DISCIPLINE
CLOTHING
EXERCISE
BEDDING

O'Leary v. Iowa State Men's Reformatory, 79 F.3d 82 (8th Cir. 1996). Iowa inmates who were placed in a progressive four-day behavior management program filed suit under § 1983 alleging cruel and unusual punishment. The district court entered judgment for the defendants and the inmates appealed. The appeals court affirmed the lower court decision, finding that the inmates were not denied the minimal civilized measures of life's necessities. The court also found that there was no showing that prison officials were deliberately indifferent to an excessive risk to inmate health or safety. The inmates had received disciplinary reports and were placed in the behavior management program. On the first day of the program prisoners are deprived of underwear, blankets, mattresses, exercise and visits; prisoners are provided with normal diets, sanitation and hygiene supplies, and they may read their mail but they may not retain it. On the second and following days prisoners gradually regain the deprived items--as long as they demonstrate satisfactory behavior. (Iowa State Men's Reformatory)

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT

Oliver v. Deen, 77 F.3d 156 (7th Cir. 1996). A state prison inmate sued prison officials seeking damages for alleged violation of his Eighth Amendment rights by housing him with smoking cellmates. The district court entered summary judgment in favor of the defendants and the

appeals court affirmed. The appeals court held that the inmate failed to demonstrate that he had a sufficiently serious medical need to implicate the Eighth Amendment or to provide the basis for an award of damages. The court noted that while the inmate was asthmatic and showed signs of discomfort and the prison doctor issued a permit to the inmate to have a nonsmoking cellmate, the inmate's medical records showed that his asthma was mild, that he never required outside hospitalization, and the only evidence of a causal relationship between smoke and the inmate's discomfort was a few general news articles which indicated that smoke could aggravate an asthmatic condition. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
PROTECTIVE CUSTODY
DOUBLE CELLING
FAILURE TO PROTECT
WORK
RESTRAINTS

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. (Wagner Youth Correctional Facility, New Jersey)

U.S. Appeals Court
TOILETS
SANITATION
TEMPERATURE

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. District Court
SMOKE-FREE
ENVIRONMENT

Warren v. Keane, 937 F.Supp. 301 (S.D.N.Y. 1996). Prisoners brought a § 1983 action against prison officials alleging that their exposure to environmental tobacco smoke (ETS) violated their Eighth Amendment rights. The district court denied the defendants' motion for summary judgment, finding a fact question as to whether the level of smoke permeating the prison was so severe as to be a danger to the health of prisoners. The court also found that a fact question as to whether a prison corrections officer and fire and safety officer were entitled to qualified immunity precluded summary judgment. The court ruled that supervisors did not have qualified immunity because they were chargeable with the knowledge of the conditions of the prison and with the knowledge that second-hand smoke could cause serious health problems. The prisoners alleged that smoke permeated the facility due to underenforcement, inadequate smoking rules, overcrowding, and poor ventilation. (Ossining State Correctional Facility, New York)

U.S. District Court
CLOTHING

Young v. Berks County Prison, 940 F.Supp. 121 (E.D.Pa. 1996). An inmate filed a § 1983 claim alleging that his conditions of confinement amounted to cruel and unusual punishment in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants, finding that the deprivation suffered by the inmate, who was often forced to wear ill-fitting and dirty, torn clothes, was not sufficiently serious to be of a constitutional dimension. The inmate was five feet, eleven inches tall and weighed approximately 300 pounds when he was admitted to the prison. He required size 4X pants and shirts, and he was consistently unable to receive a suitable standard issue of two sets of clothing. The prison did not have enough clothes large enough in stock and had particular difficulty supplying the inmate with pants. The prison permitted the inmate to do his own wash so that he would always have a set of clean clothes. The court noted that the inmate was no doubt caused substantial inconvenience and discomfort, but this did not rise to the level of a constitutional violation. (Berks County Prison, Pennsylvania)

U.S. District Court
MEDICAL CARE
TEMPERATURE
CLOTHING

Young v. Breeding, 929 F.Supp. 1103 (N.D.Ill. 1996). An inmate brought an action against correctional officers, a warden, a nurse and a physician, alleging violation of his constitutional rights. The district court found that the inmate stated a claim against the nurse and correctional officers who allegedly refused to provide him with medical attention during an asthma attack, and against a warden who allegedly ordered the transfer of the inmate to a psychiatric center. The court also found that the inmate stated an Eighth Amendment claim

regarding his confinement in a hospital unit's strip cell for approximately 20 days, where he was stripped and forced to endure the cold temperature of his cell and had to wrap himself in toilet paper to stay warm. The court found that the inmate stated a claim against a physician who allegedly forcibly medicated the inmate against his will each time the inmate requested to be released from the strip cell. Officers allegedly sprayed the inmate with mace and refused to provide him with medical attention. (Joliet Correctional Center, Illinois)

1997

U.S. District Court
SMOKE-FREE
ENVIRONMENT
ADA-Americans with
Disabilities Act

Boblett v. Angelone, 957 F.Supp. 808 (W.D.Va. 1997). An inmate filed a pro se § 1983 action against prison officials alleging constitutionally inadequate treatment for his knee problems and exposure to environmental tobacco smoke (ETS). The district court granted summary judgment in favor of the defendants. The court found that the Americans with Disabilities Act (ADA) did not apply to state prisons and that prison officials' alleged denial of proper rehabilitative therapy and knee braces did not amount to deliberate indifference. The court also found that the officials' refusal to assign the inmate to a nonsmoking dormitory and to assign him to a bottom bunk did not violate his constitutional rights. According to the court, the inmate failed to establish that the level of environmental tobacco smoke (ETS) to which he was exposed for a four-day period had created an unreasonable risk of serious damage to his future health. Although a prison physician did not examine the inmate until approximately one month after the inmate requested to see a physician, the court found nothing in the record to suggest that the delay stemmed from any deliberate indifference on the part of the physician or any other prison official. The court also found that the failure of prison officials to arrange for the inmate's immediate consultation with a prison physician regarding the inmate's request for a medical transfer did not amount to deliberate indifference. (Bland Correctional Center, Virginia)

U.S. District Court
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. District Court
USE OF FORCE
SANITATION

Dennis v. Thurman, 959 F.Supp. 1253 (C.D.Cal. 1997). An inmate proceeding pro se and in forma pauperis brought an action against 36 prison officials alleging constitutional violations because he was deprived of water for 36 hours. He also challenged the force used to extract him from his cell and alleged inadequate and untimely medical care for injuries he sustained during the cell extraction. The district court held that prison officials did not use excessive force in removing the inmate from his cell. The officials had used a block gun, which shot rubber blocks at a high velocity. The court found that no official acted maliciously or sadistically for the purpose of causing the inmate pain, and the cell extraction was necessary to allow a search which was conducted in response to a plan to kill a correctional officer. The court found that even if the inmate was without water for 36 hours during a search of his cell block, there was no Eighth Amendment violation. In the past, the inmate had used water to flood the cell block, creating a dangerous condition for both prison officials and other inmates. (California State Prison-Los Angeles County)

U.S. Appeals Court
CLOTHING
BEDDING
TEMPERATURE
VENTILATION

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
THREATS

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

retroactively. The court held that a prison official's verbal threats to an inmate do not violate due process unless accompanied by physical force or the present ability to effectuate the threat. The inmate was on her way to attend the religious service when an officer ordered her back to the recreation yard. When the inmate asked the officer why she could not attend her religious service the officer allegedly responded with obscenities. The inmate returned to her housing unit and requested to be seen by someone in the mental health department because she "was unstable" after her exchange with the officer and needed to "calm down." (Bedford Hills Correctional Facility, New York)

U.S. Appeals Court
DISCIPLINE
SEGREGATION

Leslie v. Doyle, 125 F.3d 1132 (7th Cir. 1997). A state prison inmate brought a civil rights action against corrections officials alleging he was placed in disciplinary segregation as the result of baseless charges filed by a prison guard. The district entered judgment in favor of the officials and the appeals court affirmed. The appeals court found that the inmate's confinement in disciplinary segregation for 15 days was not sufficiently serious to be considered cruel and unusual punishment for Eighth Amendment purposes--even if the inmate had not committed the charged offense. The court also found that placing the inmate in disciplinary segregation for 15 days based on unfounded charges did not violate due process. According to the appeals court, "This case raises disturbing questions about the nature and extent of the constitutional rights that protect state prisoners from the arbitrary and arguably lawless acts of state prison officials." The inmate was exonerated by a prison administrative board of charges that he was insolent, but this exoneration occurred well after the inmate had served his 15-day term in disciplinary segregation. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
MEDICAL CARE

Maggert v. Hanks, 131 F.3d 670 (7th Cir. 1997). A prisoner brought an action alleging that a prison's failure to give him estrogen therapy for gender dysphoria was a form of cruel and unusual punishment. The district court dismissed the suit and the appeals court affirmed, finding that except in special circumstances, the Eighth Amendment does not entitle a prison inmate to curative treatment--such as a sex-change operation--for the psychiatric condition of gender dysphoria. The prison had offered the expert testimony of a psychiatrist who believed that the prisoner did not have gender dysphoria, which was not refuted by the prisoner. (Indiana)

U.S. District Court
TEMPERATURE

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. Appeals Court
LETHAL INJECTION

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
FOOD
SANITATION

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
FOOD
DISCIPLINE

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. Appeals Court
SMOKE FREE
ENVIRONMENT

Weaver v. Clarke, 120 F.3d 852 (8th Cir. 1997). An inmate brought a § 1983 action against employees of the department of correctional services alleging Eighth Amendment violations arising from his exposure to environmental tobacco smoke (ETS). The defendants imposed a smoking ban in all correctional facilities and then prevailed on summary judgment motions on claims for damages and injunctive relief. In announcing the ban, the Director of the Department stated that "pending inmate litigation, both locally and nationally on the issue of second hand smoke are concerns that must be addressed." The inmate sought fees and expenses which were granted by the district court. The employees appealed and the appeals court affirmed. The appeals court held that the inmate was the prevailing party, affirming the district court award of \$8,346 in attorney fees and \$2,952 expenses. The court also found that the employees were not deliberately indifferent to the inmate's serious medical needs, as required to establish a § 1983 claim. The court noted that the employees took action to house the inmate in a smoke-free cell and took reasonable steps to ensure that the inmate's cellmate observed the no-smoking rule. (Lincoln Correctional Center, Nebraska)

U.S. District Court
CAPITAL
PUNISHMENT

Williams v. Hopkins, 983 F.Supp. 891 (D.Neb. 1997). A state prisoner filed a § 1983 action against a prison warden seeking injunctive relief and monetary damages for alleged violation of his civil rights arising out of his pending execution by electrocution. The district court dismissed the action, finding that neither electrocution nor multiple applications of current violated the Eighth Amendment. (Nebraska State Penitentiary)

U.S. Appeals Court
DEATH PENALTY

Williams v. Hopkins, 130 F.3d 333 (8th Cir. 1997). A state prisoner sentenced to death by electrocution brought a civil rights action challenging the constitutionality of electrocution in general and Nebraska's method of electrocution in particular. The district court dismissed the action as frivolous and the appeals court affirmed, finding that the action was the functional equivalent of a successive habeas action, subject to the procedural requirements of successive habeas actions. The court held that passing of more than one current of electricity into the body of a prisoner to effect his death does not support a claim of cruel and unusual punishment under the Eighth Amendment, absent any suggestion of malevolence. (Nebraska)

U.S. District Court
CAPITAL PUNISH-
MENT
EXERCISE
PRIVACY

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. District Court
RESTRAINTS
TOILET
WORK

Austin v. Hopper, 15 F.Supp.2d 1210 (M.D.Ala. 1998). Inmates in a state prison system brought a class action suit under § 1983, challenging several of the system's policies and practices. The district court held that an agreement settling the inmates' chain gang claim was not subject to the limitations on prospective relief imposed by the Prison Litigation Reform Act (PLRA) and the settlement was approved. The agreement called for a complete and permanent cessation of the practice of chaining prisoners together. Inmates on chain gangs had been shackled by leg irons in groups of five, separated by eight feet of chain between them, were required to wear white uniforms with "Chain Gang" printed in black, and were taken to public highways or work sites where they performed manual labor in ten-hour shifts. The court found that an automatic 90-day denial of visitation for inmates assigned to a shock incarceration program did not violate their First Amendment right to visitation. The inmates in the program were recidivists and parole violators. According to the court, the denial of visitation promoted the legitimate penological objectives of deterrence and rehabilitation in a common-sense way, and the inmates had mail and telephone calls as an alternative means of communication. The court held that the practice of disciplining inmates who refused to work or who were disruptive by chaining them to a "hitching post" was cruel and unusual punishment. The inmates experienced actual, significant pain while shackled to the post and were denied access to basic human needs such as shelter, water, and toilet facilities. The court declined to approve a proposed toilet facilities settlement in response to the inmates' claims that inmates on work squads were not provided with adequate toilet facilities. (Alabama Department of Corrections)

U.S. District Court
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. District Court
DOUBLE CELLING
VENTILATION

Bolton v. Goord, 992 F.Supp. 604 (S.D.N.Y. 1998). Inmates brought a § 1983 suit claiming that New York's practice of housing two inmates in a prison cell previously used to house one inmate violated the Eighth and Fourteenth Amendments. The district court held that double celling under the conditions set forth at trial did not constitute cruel and unusual punishment and that New York had not conferred on inmates a protected liberty interest in single-cell housing. The court held that the application of the Eighth Amendment is guided by contemporary standards of decency, but while the opinions of experts and the standards established by concerned organizations may be helpful on some questions, they do not establish constitutional minima. According to the court, public attitudes toward certain punishment, or what society is willing to tolerate in its prisons, is the more appropriate gauge of contemporary standards. The court noted that when double-celling was researched prior to its implementation, officials considered whether an inmate was violent or victim-prone before placing him in a double cell, evidence did not establish a cause and effect relationship between double-celling and an increase in violence, and guidelines for double-celling took into account medical conditions. According to the court, double-celling was in effect in most other state prison systems and in the federal system at the time it was implemented in New York. Inmates had the same access to extensive programs and services after double-celling was implemented, and there was no evidence of "overcrowding" in the sense that the facility had to compromise its services in order to handle the additional number of inmates. The court also noted that disputes between cellmates were handled quickly and never rose to more than minor incidents of physical violence, the small cell size was not shown to have resulted in the deprivation of any basic human need, and there was no indication that natural ventilation was so inadequate as to cause injury. According to the court, the Eighth Amendment does not guarantee inmates a certain type of ventilation or a certain rate of air exchange. (Woodburne Correctional Facility, New York)

U.S. District Court
MEDICAL CARE

Bout v. Bolden, 22 F.Supp.2d 646 (E.D.Mich. 1998). A prisoner brought a civil rights action against prison officials. The district court granted summary judgment for the defendants, finding that a prison official was not deliberately indifferent in refusing to reassign the prisoner to a lower bunk, even though the prisoner had been given a "medical detail" for assignment to a lower bunk. According to the court, even assuming that the official had knowledge of the medical detail, refusal to comply would not have posed conscious disregard for excessive risk to the prisoner's health and safety, given evidence of malingering in the prisoner's medical records. The court also held that drilling the prisoner's teeth without anesthesia for a short period in order to treat a dental condition is not the sort of barbarous and wanton infliction of pain from which a prisoner is protected by the Eighth Amendment. (Mich. Dept. of Corrections)

U.S. Appeals Court
SANITATION

Davis v. Scott, 157 F.3d 1003 (5th Cir. 1998). A prisoner brought a pro se, in forma pauperis complaint against prison guards and their supervisors alleging unconstitutional conditions of confinement. The district court dismissed the complaint and the appeals court affirmed. The appeals court held that the prisoner's confinement for three days in a crisis management cell which he alleged had blood on the walls and excrement on the floor did not constitute an extreme deprivation so as to violate the prisoner's rights under the Eighth Amendment. The court noted that the prisoner had cleaning supplies available to him. (Coffield Unit, Texas)

U.S. District Court
THREATS
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 Institution at Graterford, Pennsylvania)

U.S. District Court
CAPITAL PUNISH-
MENT

Jones v. McAndrew, 996 F.Supp. 1439 (N.D.Fla. 1998). Four inmates who were sentenced to death brought an § 1983 action against corrections officials seeking injunctive relief with respect to electrocution procedures. The district court granted summary judgment to the officials. According to the court, under the Farmer standard the duty to avoid inflicting serious injury at the hands of the executioner was at least as great as the duty to avoid infliction of harm by fellow inmates. The inmates alleged that there was a risk of fire about the head of the person being executed, as occurred with a previous execution. The court found that the officials were not deliberately indifferent because after the execution during which fire broke out, the officials hired experts to analyze the problem and recommend solutions, took the experts' advice in changing the procedures, and obtained a favorable ruling from a state supreme court on the new procedures. (Florida State Prison)

U.S. Appeals Court
CAPITAL
PUNISHMENT

Langford v. Day, 134 F.3d 1381 (9th Cir. 1998). A prisoner sentenced to death claimed that hanging, his chosen method of execution under Montana law, violated the Eighth Amendment. The district court ruled that his claim became moot when the Montana legislature abolished hanging. (Montana)

U.S. District Court
SMOKE-FREE
ENVIRONMENT

McPherson v. Coombe, 29 F.Supp.2d 141 (W.D.N.Y. 1998). An inmate brought a § 1983 action alleging violations of his First, Eighth and Fourteenth Amendment rights arising from his exposure to environmental tobacco smoke (ETS). The district court denied the defendants' motion for summary judgment, finding that it was precluded by fact questions as to whether smoke conditions in the prison violated contemporary standards of decency, whether officials were aware of the potential risks to the inmate's future health, and whether the superintendent was personally involved in decisions leading to denial of the inmate's request to be housed in a smoke-free environment. The court found that prison smoking regulations, which permitted smoking in dormitory areas, did not violate the inmate's First Amendment rights to freedom of association because designated non-smoking areas gave the inmate opportunities to exercise his right to associate with other inmates. The inmate had alleged that the smoking policy restricted his movement within the dormitory in his attempt to evade contact with ETS. (Attica Correctional Facility and Orleans Correctional Facility, New York)

U.S. Appeals Court
SMOKE FREE
ENVIRONMENT

Scott v. District of Columbia, 139 F.3d 940 (D.C. Cir. 1998). Nonsmoking prisoners brought a civil rights suit against the District of Columbia alleging violation of their Eighth Amendment rights by exposing them to second-hand tobacco smoke. The district court entered an injunction requiring the District of Columbia to provide the prisoners with a smoke-free environment. The District appealed and the appeals court reversed, finding that evidence was insufficient to establish that the prisoners were exposed to an unreasonably high level of smoke, where measurements indicated that the amounts of second-hand smoke were within acceptable levels and the prisoners failed to demonstrate a relationship between the smoke and their alleged ailments. The appeals court also held that evidence was insufficient to establish that prison officials were deliberately indifferent to the risk of harm that second-hand smoke posed to prisoners, where evidence indicated that the officials made a good faith attempt to enforce a nonsmoking policy and improved ventilation in certain areas. (Lorton Correctional Complex, Virginia, District of Columbia)

U.S. District Court
TOTALITY OF
CONDITIONS
DOUBLE CELLING
FOOD
CROWDING
SANITATION

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

U.S. Appeals Court
FOOD

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)

U.S. Appeals Court
SMOKING

Webber v. Crabtree, 158 F.3d 460 (9th Cir. 1998). Inmates in a federal prison camp sued prison officials, seeking equitable relief from a camp ban on smoking. The district court granted summary judgment for the defendants. The appeals court held that the smoking ban did not violate inmates' equal protection rights, but that prison regulations did not grant the warden the discretion to ban all smoking at the camp. Prison regulations provided that the warden "shall identify" outdoor smoking areas. (Federal Prison Camp, Sheridan, Oregon)

1999

U.S. District Court
CONDITIONS
SAFETY

Abarca v. Chevron U.S.A. Inc., 75 F.Supp.2d 566 (E.D.Tex. 1999). Prison employees and prison inmates, more than 1,000 total, sued the owner and operator of a pipeline and contractors who sold installed and maintained the pipeline's valves, alleging assault, negligence, gross negligence, strict products liability, and cruel and unusual punishment arising out of a pipeline leak near the prison. The plaintiffs were forcibly exposed to gas when they were unable to be evacuated and the inmates were confined to their cells. The district court found that there was no federal question for which federal jurisdiction existed, dismissing the case. (Texas Department of Corrections, Liberty County, Texas)

U.S. District Court
TEMPERATURE
MEDICAL CARE

Anton v. Sheriff of DuPage County, Ill., 47 F.Supp.2d 993 (N.D.Ill. 1999). A pretrial detainee brought a § 1983 action against a county and county officials alleging that he was subjected to unconstitutional conditions of confinement at a county jail. The district court refused to dismiss the case, finding that his alleged exposure to low temperature in a detention cell while naked and with no alternative means of protecting himself from the cold supported a claim of inadequate shelter against the county. The detainee allegedly repeatedly complained to jail officers for hours and they responded with jeers and laughter, and he was not provided with medical care until he threatened litigation. When a nurse finally attended to the detainee, his body temperature was three degrees below normal. The detainee had just attempted suicide and had been placed in a rubberized cell without clothing and was observed every 15 minutes. The court also found that deputies' alleged thwarting of medical treatment given to the detainee supported a claim of violation of his right to medical attention. The officers allegedly removed a blanket that was given to the detainee by the nurse, which the court held supported a claim for deliberate indifference. The court denied qualified immunity for the officers, finding that it was clearly established at the time of this incident that pretrial detainees had a constitutional right to adequate heat and medical attention. (DuPage County Jail, Illinois)

U.S. District Court
EXERCISE
PLUMBING

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

U.S. Appeals Court
SMOKE-FREE ENVIRON.
SMOKE

Henderson v. Sheahan, 196 F.3d 839 (7th Cir. 1999) U.S. Cert Den. at 120 S.Ct. 2691. A pretrial detainee who was held in a county jail for four-and-one-half years brought a § 1983 action against the sheriff and corrections officials claiming injuries allegedly sustained as the result of his exposure to second-hand smoke. The district court dismissed the action. The appeals court affirmed, finding that the inmate's alleged present injuries were not sufficiently serious to support a due process claim and that the detainee could not recover for future injuries absent a showing to a reasonable medical certainty that he faced an increased risk of developing a future injury attributable to the alleged exposure. The detainee alleged present injuries that included breathing problems, chest pains, dizziness, sinus problems, headaches, and loss of energy. Although the jail had a non-smoking policy the detainee claimed that inmates routinely violated it. (Cook County Jail, Illinois)

U.S. District Court
WORK

Howard v. Headly, 72 F.Supp.2d 118 (E.D.N.Y. 1999). A state prisoner brought a § 1983 action against prison officials alleging that they required him to work beyond his physical capabilities. The district court denied qualified immunity to the officials, finding that the prisoner had stated a claim for a violation of the Eighth Amendment. The court noted that the officials required the prisoner, who had a back injury, to work sanitation duty despite the pain and agony that it caused

the prisoner, and despite the knowledge that a physician's orders precluded such work. (Arthur Kill Correctional Facility, New York)

U.S. Appeals Court
BEDDING
CLOTHING
LABOR
SANITATION
TEMPERATURE
TOILETS

Palmer v. Johnson, 193 F.3d 346 (5th Cir. 1999). A state inmate brought a § 1983 action for monetary and injunctive relief against correctional officials, alleging violation of his constitutional rights when he was forced to spend a night on a work field, along with other members of a work squad, without adequate bathroom facilities and shelter. The district court found a warden and assistant warden liable in their individual capacities, granted injunctive relief, and ordered claims for monetary damages to proceed to trial. The appeals court affirmed in part and remanded, finding that the inmate had demonstrated a violation of his clearly established Eighth Amendment rights and that the warden and assistant warden were not entitled to summary judgment on the basis of qualified immunity. The inmate alleged that he and other members of his work crew were confined outdoors overnight without any shelter, jackets, blankets, or a source of heat while the temperature dropped and the wind blew, and without bathroom facilities for 49 inmates sharing a small bounded area. The warden allegedly ordered this "sleep-out" in response to the inmates' response to a lecture they had received from a sergeant after lunch. They were ordered to stop and sit in the field, even though some of them wanted to go to work. They were confined to an area measuring approximately twenty feet by thirty feet, bounded by poles and a string of lights. Correctional officers were ordered to shoot any inmate who attempted to leave the designated area. When the inmate asked permission to leave the area to urinate and defecate he was informed that he would be shot if he attempted to do so outside of the boundaries that had been set. The inmates were dressed in short sleeve shirts for a day of work in the field, but the temperature fell below fifty-nine degrees overnight and the inmates were forced to stay warm by huddling together. Both the warden and assistant warden were present during the evening of the "sleep-out" and the warden allegedly threatened another such event if the inmates refused to work. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
MEDICAL CARE

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

U.S. Appeals Court
FOOD
MEDICAL CARE

Reed v. McBride, 178 F.3d 849 (7th Cir. 1999). A state prisoner brought a § 1983 action alleging that prison officials violated his Eighth Amendment rights by withholding food and life-sustaining medication from him while he was incarcerated. The district court entered summary judgment in favor of the defendants but the appeals court reversed and remanded. The appeals court held that the prisoner's medical condition was sufficiently serious to support an Eighth Amendment claim and that material fact issues existed as to whether the officials acted with deliberate indifference to the prisoner's serious medical needs. According to the court, depriving a prisoner doctor-prescribed medication that allegedly led to agonizing and extreme pain, internal bleeding and periods of unconsciousness, was a serious medical condition for the purposes of § 1983. The court found that depriving a prisoner of food may be so objectively serious as to support a claim of cruel and unusual punishment under the Eighth Amendment, when the amount and duration of the deprivation is considered. The inmate suffered from a variety of ailments, including paralysis, heart disease, Hunt's syndrome, high blood pressure, rheumatoid arthritis, and other crippling diseases of the legs, ankles, feet, hands and spine. The inmate complained that every Friday for an unspecified period of time he was returned from treatment at a local hospital and was unable to retrieve his identification badge until the following Monday or Tuesday. Without the badge he was not permitted to receive food or medication from prison authorities. (Westville Correctional Facility, Indiana)

U.S. District Court
LIGHTING

Richard v. Reed, 49 F.Supp.2d 485 (E.D.Va. 1999). A prisoner brought a § 1983 complaint alleging that county jail officials violated his Eighth Amendment rights by depriving him of direct sunlight for more than 100 days. The district court dismissed the case, finding that the prisoner failed to state an Eighth Amendment claim because deprivation of sunlight for 100 days was not a sufficiently serious deprivation of a human need. The court held that the case was frivolous. The prisoner was confined in a housing unit comprised of a dayroom which had no windows and ten cells, each of which had a window. Prisoners were not allowed in their cells between 8:30 a.m. and 5:30 p.m. and prisoners who wanted to take recreation could use an indoor recreation area. The prisoner alleged that his health was placed in danger because he was exposed to illness caused by a lack of exposure to direct sunlight. The court suggested that there might be extreme circumstances under which deprivation of sunlight or light for an extended period of time might amount to a serious deprivation, but found this was not such a case. The court cited Charles Dickens's *A Tale of Two Cities* in which a character was imprisoned in the Bastille for almost eighteen years in a small cell "where the light of day has never shone." But after reviewing nine cases that had considered a similar question with varied results, the court concluded that "the threshold for constitutional significance occurs well short of the Dickens

example.” The court found that the conditions cited by the prisoner did not violate contemporary notions of decency, stating that “This conclusion finds support given that people who serve on nuclear submarines or who live within the Arctic Circle or in Antarctica go without direct exposure to sunlight for similarly long periods of time.” The court also noted that the window in the prisoner’s cell would provide natural light in the summertime when he was allowed back into the cell at 5:30 p.m. (Fairfax County Adult Detention Center, Virginia)

U.S. Appeals Court
HARASSMENT

Snider v. Dylag, 188 F.3d 51 (2nd Cir. 1999). An inmate brought a § 1983 suit against a correctional officer for alleging telling other inmates that it was “open season” on him. The district court dismissed the action but the appeals court vacated the decision and remanded the case. The appeals court held that the inmate had stated a claim under § 1983 for violation of his Eighth Amendment right to be free from cruel and unusual punishment and his Fourteenth Amendment right to be protected equally. The court noted that although the officer was not present when the inmate was assaulted by two or three other inmates, this was not required for the inmate to establish a violation of his rights by the officer. (Attica Correctional Facility, New York)

U.S. District Court
CAPITAL
PUNISHMENT

Faulder v. Johnson, 99 F.Supp.2d 774 (S.D.Tex. 1999). A prisoner filed a § 1983 action alleging that he had been subjected to psychological torture as the result of repeated stays of his execution and that his right to consult with consular officials had been violated. The district court held that the prisoner’s twenty-two year wait on death row did not violate the Eighth Amendment. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
DEATH PENALTY

Henderson v. Collins, 101 F.Supp.2d 866 (S.D. Ohio 1999). A convicted offender petitioned for habeas corpus relief alleging that Ohio’s execution process constituted cruel and unusual punishment. The district court held that Ohio’s process, in which a prisoner is offered a choice between death by lethal injection or death by electrocution, did not constitute cruel and unusual punishment. (Hamilton County, Ohio)

U.S. Supreme Court
CAPITAL PUNISH-
MENT

Stewart v. LaGrand, 119 S.Ct. 1018 (1999). An inmate who was sentenced to death petitioned for a writ of habeas corpus challenging the use of lethal gas as a cruel and unusual form of execution. The district court denied the petition but the appeals court granted a certificate of appealability and enjoined the state from executing the prisoner by means of lethal gas. The United States Supreme Court reversed the appeals court decision and vacated the injunction. The Court held that the inmate had waived his claim that execution by lethal gas violated the Eighth Amendment by choosing to be executed with lethal gas rather than by lethal injection. (Arizona)

U.S. Appeals Court
SMOKE

Warren v. Keane, 196 F.3d 330 (2nd Cir. 1999). State inmates brought an § 1983 action alleging that they were subjected to cruel and unusual punishment through exposure to second-hand smoke. The district court denied summary judgment for the defendants and they appealed. The appeals court affirmed and remanded the case. The appeals court held that at the time the inmates brought the action it was clearly established that prison officials could violate the Eighth Amendment through deliberate indifference to inmates’ exposure to levels of environmental tobacco smoke (ETS) that posed an unreasonable risk of future harm to the inmates’ health. According to the court, fact issues existed as to whether the prison officials reasonably believed that they were not violating the inmates’ Eighth Amendment rights in permitting their exposure to allegedly severe levels of ETS. (Cell Block A, Sing Sing Prison, New York)

2000

U.S. District Court
CLOTHING

Ashann-Ra v. Com. Of Virginia, 112 F.Supp.2d 559 (W.D.Va. 2000). A prisoner sued state officials alleging various constitutional violations. The court held that the prisoner’s claim that correctional officers failed to provide him with well-fitted shoes for 24 days did not state an Eighth Amendment claim, where he did not allege that he suffered any serious physical injury to his feet or any other part of his body. The court found that the prisoner’s claim that correctional officials misapplied grievance procedures by refusing to accept grievances about a grooming policy that had not yet been enforced, failed to state a deprivation of any constitutionally protected rights. According to the court, an institution’s failure to comply with state grievance procedures does not compromise an inmate’s right of access to courts because state grievance procedures are separate and distinct from state and federal legal procedures. (Red Onion State Prison, Virginia)

U.S. District Court
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. Appeals Court
SANITATION
RESTRAINTS
TEMPERATURE

Johnson v. Lewis, 217 F.3d 726 (9th Cir. 2000). Inmates who had been held out-of-doors while prison officials searched buildings after quelling disturbances brought two class actions against prison officials under § 1983, asserting that the conditions under which they were held violated the Eighth Amendment. The district court granted summary judgment for the defendants in each case and the inmates appealed. The appeals court reversed and remanded, holding that the inmates' evidence, if believed, would establish deprivations sufficiently serious to satisfy the objective component of the Eighth Amendment. The court found that the evidence was sufficient, if believed, to show that the officials had actual knowledge of the inmates' exposure to the elements and need for sanitation, edible food, and adequate drinking water, and that they intentionally disregarded these conditions. The inmates alleged that during the four days that they were held out-of-doors in the summer they did not receive protection from the elements sufficient to ward off heat-related illnesses, that they received inedible food and inadequate drinking water, and that they did not receive adequate access to toilets to avoid soiling themselves and were not allowed to clean themselves after. The inmates had also been held out-of-doors for 17 hours in subfreezing temperatures in the winter. (Arizona State Prison in Safford)

U.S. District Court
TEMPERATURE
FOOD

Leach v. Dufraim, 103 F.Supp.2d 542 (N.D.N.Y. 2000). A state prison inmate brought a § 1983 action against corrections officials alleging constitutional violations. The district court granted summary judgment for the defendants. The court held that there was no evidence concerning allegedly cold cell conditions, such as the date, outside temperature, or a corroborating statement by another prisoner. The court found that the regulation of hair length was not gender discrimination. According to the court, the denial of hot food for two months as discipline for misconduct was not cruel and unusual punishment, absent a showing of nutritional inadequacy or immediate danger to the prisoner's health and well-being. (Franklin Corr. Facility, New York)

U.S. District Court
VENTILATION

Sarro v. Essex County Correctional Facility, 84 F.Supp.2d 175 (D.Mass. 2000). A state prison inmate sued prison officials under § 1983 for violation of the Massachusetts Tort Claims Act. The district court granted summary judgment for the defendants, finding that the requirement that the inmate keep his cell windows shut for three days and nights did not violate the Eighth Amendment. According to the court, the inmate's allegation that he was not "breathing normally" during the period that the windows were shut, and that he needed to use his inhaler to help him breathe normally, was an insufficient assertion of a physical injury to maintain a suit to recover for alleged mental and emotional injury. (Essex County Correctional Facility, Massachusetts)

U.S. District Court
THREATS

Warren v. Westchester County Jail, 106 F.Supp.2d 559 (S.D.N.Y. 2000). An inmate brought a § 1983 action against a county jail, administrators and officers, alleging Eighth Amendment violations. The district granted summary judgment for the defendants, holding that a jail officer who fought with the inmate had not employed excessive force when he grabbed the inmate in a bear hug in a good faith effort to restore order, even though the inmate claimed that the officer took advantage of the situation to administer additional blows. The court also held that verbal abuse, which the inmate had alleged he was subjected to, did not rise to the level of a constitutional violation that was actionable under § 1983. (Westchester County Jail, New York)

U.S. 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)

2001

U.S. Appeals Court
SMOKE -FREE
ENVIRONMENT

Alvarado v. Litscher, 267 F.3d 648 (7th Cir. 2001). A prisoner brought an action against a prison alleging deliberate indifference to his exposure to environmental tobacco smoke in violation of the Eighth Amendment. The district court denied the prison's motion to dismiss and the appeals court affirmed, finding that the prisoner stated a claim upon which relief could be granted. The court found that the prisoner's current and future health had been endangered because he had chronic asthma. The prisoner alleged that other prisoners in his non-smoking housing unit smoked in violation of prison policy because correctional officers were frequently not at their post to enforce the smoking ban. The prisoner also alleged that he is unable to participate in programs

that would enhance his chances of parole because smoking is permitted in common areas of the prison. (Dodge Correctional Institution, Wisconsin)

U.S. District Court
SMOKING

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. District Court
NOISE
SANITATION
TEMPERATURE

Caldwell v. District of Columbia, 201 F.Supp.2d 27 (D.D.C. 2001). An inmate filed a § 1983 action against the District of Columbia and several employees of its corrections department, alleging unconstitutional conditions of confinement and denial of medical care. A jury entered a verdict in favor of the inmate, on all claims, and awarded \$174,178. The appeals court granted judgment for the defendants as a matter of law, in part, denied judgment for the defendants in part, and did not reduce the damage award. The court found that statements by the inmate's attorney during his closing argument, suggesting specific dollar amounts to be considered by the jury, did not warrant a new trial. The appeals court held that findings that conditions were unconstitutional were supported by evidence, as were findings that officials were deliberately indifferent to the inmate's serious medical needs. The appeals court held that the Prison Litigation Reform Act (PLRA) does not require a prisoner to allege or prove serious, permanent physical injury in order to bring an action for violation of his constitutional rights. The appeals court 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 Corr'l Complex, Dist. of Columbia)

U.S. Appeals Court
PLUMBING
SANITATION

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

U.S. District Court
USE OF FORCE
MEDICAL CARE

Ducally v. Rhode Island Dept. of Corrections, 160 F.Supp.2d 220 (D.R.I. 2001). A prisoner brought a § 1983 action against a corrections department and corrections officers alleging cruel and unusual punishment. The district court dismissed the claims against the department, but found that the prisoner stated a claim against an officer with his allegations that the officer intentionally slammed a cell door on his hand and delayed the provision of medical care. The prisoner alleged that he suffered two cuts, swollen fingers, and loss of power and feeling in his fingers and hand. (Adult Correctional Institution, Cranston, Rhode Island)

U.S. District Court
SMOKE

Reilly v. Grayson, 157 F.Supp.2d 762 (E.D.Mich. 2001). A prisoner brought a § 1983 action against a warden, deputy warden, and Michigan Department of Corrections physicians, alleging violation of his Eighth Amendment rights. After a bench trial, the district court ruled that the warden and deputy wardens were deliberately indifferent to the prisoner's serious medical need to be placed in a smoke-free environment, supporting the prisoner's cruel and unusual punishment claims. The court found that the wardens were reckless in their disregard of the prisoner's rights, and awarded the prisoner \$18,250 in punitive damages and \$36,500 in compensatory damages for the five years of inaction by the wardens. The prisoner had two Individual Management Plans (IMP) which required that he be placed in a smoke-free environment, but the non-smoking regulations in the prisoner's cell block were consistently violated and the wardens were aware of the violations. After receiving notice that the IMPs were not being followed, the wardens continued to do nothing to remedy the situation. The court concluded that the three wardens "...each clearly ignored his supervisory obligations and, as a consequence, should suffer the opprobrium of punitive damages, not so much to deter each of them in the future, but to deter other officials in like positions of ignoring their responsibility." (Trustee Division, State Prison of Southern Michigan)

U.S. District Court
TEMPERATURE

Scotti v. Russell, 175 F.Supp.2d 1099 (N.D.Ill. 2001). An inmate brought a § 1983 action seeking injunctive relief and damages for alleged Eighth Amendment violations. The district court entered judgment for the defendants, finding that the temperature of the inmate's cell was not sufficiently cold as to constitute an Eighth Amendment violation of the inmate's right to adequate shelter. According to the court, temperature logs and maintenance records showed that the heating system was functioning adequately at the time, with the exception of two breakdowns that were quickly repaired. The inmate's medical records showed no indication of temperature-based health complaints. The court also noted that extra blankets were made available to inmates, and the prison supplemented the heating system with a program to insulate cells by taping plastic sheeting over the windows and by cleaning heating ducts. (Stateville Correctional Center, Illinois)

2002

U.S. District Court
SECURITY

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 interest 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. "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
LIGHTING

Carney v. Craven, 40 Fed.Appx. 48 (6th Cir. 2002). A state prisoner brought a civil rights action under § 1983. The district court dismissed the action and the appeals court affirmed, as modified. The appeals court held that the prisoner failed to show that prison officials were deliberately indifferent to his request to fix a faulty light which was producing a strobe-like effect, and which allegedly caused him headaches and eye pain. The court noted that the prisoner's request to have the bulb repaired was not recklessly disregarded, but rather, a new light bulb was not immediately available, and the prisoner was ultimately moved to a new cell eleven days after reporting the problem. (Tennessee)

U.S. Appeals Court
SMOKE

Davis v. New York, 316 F.3d 93 (2nd Cir. 2002). A pro se state prisoner brought a § 1983 action alleging he was exposed to unreasonably high levels of second-hand smoke, in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court held that summary judgment was precluded on the issue of whether the prisoner was exposed to unreasonable levels of second-hand smoke. The court held that the prisoner's claim was not moot, even though he had been transferred to a different housing block and the prison implemented a restrictive smoking policy, because the prisoner was housed in a block without individual cell windows and in conditions similar to those he experienced prior to the transfer. The prisoner also asserted that the prison's new smoking policy was not being enforced. (Attica Correctional Facility, New York)

U.S. Appeals Court
TEMPERATURE

Flores v. O'Donnell, 36 Fed.Appx. 204 (7th Cir. 2002). An inmate brought a § 1983 action against corrections officials alleging cruel and unusual punishment. The district court granted summary judgment in favor of the officials and the appeals court affirmed. The appeals held that while an issue of fact existed as to whether the duration and severity of cold in the inmate's cell was serious enough to implicate the Eighth Amendment, officials were not deliberately indifferent to the inmate's complaints about the cold. The court noted that in order to assess whether cold cell temperatures violated the Eighth Amendment, the court must consider factors that include the severity of the cold, its duration, whether the prisoner had alternatives means to protect himself from the cold, and the adequacy of such alternatives. According to the court, officials responded to the inmate's complaints by offering him clothing, three hours after he first complained of the cold, on the condition that he wear a mask to prevent him from spitting on officers. The inmate refused, and later received medical attention several times. (Waupun Correctional Facility, Wisconsin)

U.S. Supreme Court
RESTRAINTS
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 an officer at his chain gang's worksite in June, he was subdued, handcuffed, placed in leg irons, and transported back to the prison. Once there, he was ordered to take off his shirt, thus exposing himself to the sun, and spent seven hours on the hitching post. He was given one or two water breaks, but no bathroom breaks, and he claimed that an officer taunted him about his thirst. (Alabama Department of Corrections)

U.S. District Court
TEMPERATURE

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 the inmate was subjected to unconstitutionally cold conditions. The inmate alleged he was forced to live in a cold, drafty cell for three weeks during the winter, without his bed sheets and with only one blanket. (Southport Correctional Facility, New York)

U.S. District Court
NOISE
SANITATION

Oliver v. Powell, 250 F.Supp.2d 593 (E.D.Va. 2002). A prisoner brought a civil rights action alleging various constitutional violations. The prisoner and the defendants moved for summary judgment. The district court granted summary judgment in favor of the defendants on all of the prisoner's claims. The court held that the prisoner's allegations that prison officers deprived him of sleep by keeping him up with their singing, talking and other noise, and that his segregation cell had roaches, a leaky toilet, peeling paint and writing on the wall, did not rise to the level of an Eighth Amendment claim. The court found that these claims did not lie outside of the scope of the ordinary discomfort accompanying prison life, and noted that the prisoner neglected to report plumbing problems or use roach traps. (Southampton Correctional Center, Virginia)

U.S. Appeals Court
SMOKE-FREE
ENVIRONMENT

Reilly v. Grayson, 310 F.3d 519 (6th Cir. 2002). A prisoner brought a § 1983 action against prison officials alleging violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment for the prisoner and awarded damages. The defendants appealed and the appeals court affirmed. The appeals court held that the prisoner had a right not to be exposed to environmental tobacco smoke that presented a serious risk to his health, and to removed from places where smoke hovered. The court affirmed the lower court findings that the prisoner's asthma was a serious medical condition and that it was exacerbated by exposure to second-hand smoke, and that the defendants repeatedly failed to respond to repeated recommendations by medical personnel that the prisoner be moved to a smoke-free setting. The appeals court affirmed the award of actual damages rather than nominal damages in the amount of \$36,500, and the award of punitive damages in the amount of \$18,250. The court found no abuse of discretion in the district court's award of \$51,786 in attorney's fees. (Michigan Department of Corrections)

U.S. District Court
HARASSMENT

Seaver v. Manduco, 178 F.Supp.2d 30 (D.Mass. 2002). State inmates filed a § 1983 action alleging that corrections officials harassed them because of their status as sex offenders, and conducted retaliatory visual body cavity searches. The district court dismissed the action, finding that injunctive relief was not warranted, the inmates' claims for money damages based on harassment were barred by the Prison Litigation Reform Act (PLRA) and that officials were entitled to qualified immunity from liability for the searches. The court noted that the PLRA barred claims for mental or emotional injury without a showing of physical injury and that correctional officers had reasonable justification for conducting a visual body cavity search of the inmates where they were responding to a prison alarm because of what appeared to be a fight. The inmates alleged that staff members had posted a sign that stated "All sex offenders should be castrated" and that they were subjected to assaults from other prisoners as a result of the signs. (North Central Correctional Institution, Massachusetts)

U.S. District Court
DOUBLE-CELLING
FAILURE TO
PROTECT

Smith v. Muccino, 223 F.Supp.2d 396 (D.Conn. 2002). A state prisoner brought a pro se action alleging that the practice of housing him with violent inmates, sometimes in retaliation for his complaints, violated his constitutional rights. After an agreement to settle the case fell through, the court reopened the case and held that the prisoner's allegations stated a claim for an Eighth Amendment violation. The court noted that the prisoner was not claiming that double-celling was per se unlawful. The prisoner, who is Caucasian and who believes he is perceived to be gay, alleged that he was repeatedly housed with racist and homophobic inmates, and that his requests

for a cell change were ignored. (Osborn Correctional Institution, Connecticut)

2003

U.S. Appeals Court
SMOKE

Atkinson v. Taylor, 316 F.3d 257 (3rd Cir. 2003). An inmate brought a suit under § 1983 claiming that prison officials violated his Eighth Amendment rights by exposing him to environmental tobacco smoke (ETS) that created a serious medical need and posed an unreasonable risk of harm. The district court denied summary judgment for the defendants and they appealed. The appeals court held that the defendant officials were not entitled to qualified immunity on the ETS claim because the right of a prisoner not to be subject to the risk posed by ETS was clearly established, and there was evidence that the inmate was housed for over seven months with "constant" smokers and that officials knew that tobacco smoke was dangerous. The inmate alleged that he suffered numerous symptoms as a result of his exposure to ETS and that no change was made in his housing conditions after he told prison officials about his sensitivity to ETS. (Delaware Multi-Purpose Crim. Justice Facility)

U.S. Appeals Court
SEARCHES

Calhoun v. Detella, 319 F.3d 936 (7th Cir. 2003). A male state prisoner sued prison employees under § 1983, alleging that a strip search conducted in the presence of female officers violated his Eighth Amendment rights. The district court dismissed the case for failure to state a claim and the prisoner appealed. The appeals court affirmed in part, and vacated and remanded in part. The appeals court held that the prisoner's allegations stated an Eighth Amendment claim. The prisoner alleged that he was strip searched in front of female officers, that the officers made explicit gestures during the search and forced him to perform sexually provocative acts, and that the female officers were invited spectators. The appeals court also held that the Civil Rights of Institutionalized Persons Act (CRIPA) that barred federal civil actions by prisoners for mental or emotional injuries without a showing of physical injury, did not foreclose an action for nominal or punitive damages for violations that did not involve a physical injury. (Stateville Correctional Center, Illinois)

U.S. District Court
SEPARATION
LIGHTING
EXERCISE

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. District Court
SMOKE

Gill v. Smith, 283 F.Supp.2d 763 (N.D.N.Y. 2003). An inmate brought a § 1983 action against a correctional officer, alleging violation of his Eighth Amendment rights by exposure to environmental tobacco smoke (ETS.) The district court held that it was clearly established that prison officials could violate the Eighth Amendment through deliberate indifference to an inmate's exposure to levels of ETS, and that genuine fact issues precluded summary judgment in favor of the officer. The inmate suffered from chronic asthma and breathing conditions, and alleged that the officer smoked while on duty in the law library, the general library, while at his assigned post, while traversing in and about the prison's media center, and while at the law library desk. The inmate allegedly repeatedly asked the officer not to smoke near him. (Auburn Correctional Facility, New York)

U.S. Appeals Court
CELLS
DOUBLE CELLING

Hurst v. Snyder, 63 Fed.Appx. 240 (7th Cir. 2003) [unpublished]. A state prison inmate brought an action against prison officials, alleging that he was deprived of adequate living space. The district court dismissed the case as frivolous and the inmate appealed. The appeals court affirmed. The appeals court held that a former state statute that required prison facilities to provide at least 50 square feet of cell space per person did not give the inmate a protected liberty interest in having 50 square feet of cell space. The court found that the amendment of the statute, to delete the express reference to a "per person" space requirement, did not violate the ex post facto clause. (Menard Correctional Center, Illinois)

2004

U.S. District Court
THREATS

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
TEMPERATURE

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 found that the heat was not constitutionally excessive because the building mass generally remained between 80 degrees at night, and 85 to 86 degrees during the day. During the relevant period, the unit experienced temperatures over 90 degrees only nine percent of the time, recorded temperatures over 95 degrees only seven times, and never recorded temperatures over 100 degrees. The court noted that the building, although not air conditioned, had an effective ventilation system, and numerous conditions such as access to cold water, alleviated rather than exacerbated the heat. (Union Correctional Institution, Florida)

U.S. Appeals Court
FAILURE TO PROTECT

Christopher v. Buss, 384 F.3d 879 (7th Cir. 2004). A state inmate brought a § 1983 action alleging that failure to correct an allegedly defective condition on a prison softball field constituted cruel and unusual punishment. The district court dismissed the case and the inmate appealed. The appeals court affirmed. The court held that an allegedly “protrusive lip” on a softball field, even if it was hazardous when a ball hit it in a certain way, did not amount to a condition which was objectively serious enough to implicate the Eighth Amendment. The inmate claimed that a softball had bounced up and permanently damaged his eye. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
LETHAL INJECTION

Cooper v. Rimmer, 379 F.3d 1029 (9th Cir. 2004). A state prisoner sentenced to death by lethal injection filed a § 1983 action, alleging that the lethal injection process violates the Eighth Amendment. The district court denied relief and the inmate appealed. The appeals court affirmed, finding that the prisoner failed to show that the lethal injection procedure involved an unnecessary risk of unconstitutional pain or suffering. The court found that medical evidence established that the injection mixture would render the vast majority of individuals unconscious and unable to breathe within 60 seconds from the start of the administration of the drugs. (California State Prison at San Quentin)

U.S. Appeals Court
LIGHTING
LAUNDRY
TEMPERATURE

Gates v. Cook, 376 F.3d 323 (5th Cir. 2004). A death row prisoner brought a suit on behalf of himself and other prisoners confined to death row, alleging that certain conditions of confinement on death row violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court found that a number of conditions violated the Eighth Amendment and issued an injunction designed to alleviate the conditions. The defendants appealed. The appeals court affirmed in part and vacated in part. The court held that the prison's accreditation by a national correctional association (American Correctional Association) was not proof that the conditions of confinement did not violate the Eighth Amendment. The court noted that compliance with association standards could be a relevant consideration, but was not evidence of constitutionality. The court held that evidence supported findings that the probability of heat-related illness was extreme at the death row unit in which the class members were housed, and that corrections officials had displayed deliberate indifference. The court found that lighting in each death row cell was less than twenty foot-candles, in violation of the constitutional rights of the class members. Expert testimony was presented that lighting in the cells was grossly inadequate for the purposes of sanitation, personal hygiene and reading, and that these conditions contributed to further mental health deterioration. The court did not find a constitutional violation in the condition of the inmate laundry, which required inmates to wash their own clothes with bar soap. The court found that parts of the district court injunction that applied to sections of the death row unit that did not house class members exceeded the scope of the litigation and were invalid. The injunction directed the prison to provide fans, ice water, and daily showers when the heat index was 90 degrees or above, or to make such arrangements from May through September. The court found an Eighth Amendment violation due to mosquito infestation coupled with insufficient screen gauge, which exacerbated the heat problems by deterring death row inmates from opening their windows to increase circulation. The court noted that pest infestation problems were linked to chronic sleep deprivation, which exacerbated the symptoms of mental illness. The court found a violation due to “ping-pong” toilets, and that corrections officials were deliberately indifferent to the risk of harm that these toilets presented to death row inmates. Experts established that a serious health hazard resulted when the feces of one inmate bubbled up in the neighboring cell, and that this was exacerbated when toilets overflowed. According to the court, the State Department of Health warned corrections officials every year for the past eleven years that the malfunctioning toilets were a critical public health problem that required immediate attention. According to the court, inmates were afforded insufficient mental health care, in violation of the Eighth Amendment. The court cited the isolation and idleness, squalor, poor hygiene, temperature, and the noise of extremely psychotic prisoners, which created an environment that was “toxic” to the prisoners' mental health.

U.S. District Court
LETHAL INJECTION

Harris v. Johnson, 323 F.Supp.2d 797 (S.D.Tex. 2004). A death row prison inmate brought a civil rights action under § 1983 alleging that the protocol for lethal injection used by Texas violated the Eighth Amendment's prohibition of cruel and unusual punishment. The district court granted a temporary restraining order, staying the execution. The court held that the particular combination of chemicals used by Texas was not the only available means of causing death by lethal injection, and the inmate had presented two "lethal-injection alternatives that would not cause undue pain and suffering." (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
SMOKING

Johnson v. Pearson, 316 F.Supp.2d 307 (E.D.Va. 2004). A prisoner brought a civil rights action under § 1983 against state prison officials, alleging that they acted with deliberate indifference to his risk of medical harm when they refused to assign him to a nonsmoking cell. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the defendants acted with deliberate indifference to the risk of serious damage to the prisoner's future health as the result of his exposure to environmental tobacco smoke, and that the defendants were not entitled to qualified immunity from the prisoner's future injury claims. The court also held that the prisoner's allegations regarding present injuries from environmental tobacco smoke stated a cognizable claim under the Eighth Amendment, and that the defendants were not entitled to qualified immunity from that claim. The inmate alleged that he experienced mild headaches, difficulty breathing, eye irritation, runny nose, dizziness, and occasional stomach cramping when he was housed with a smoking inmate. The court noted that officials never considered the consequences of future health problems when they refused to transfer the inmate to a nonsmoking cell, but were only concerned with administrative convenience. (Sussex II State Prison, Virginia)

U.S. 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 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
TEMPERATURE

Jones-El v. Berge, 374 F.3d 541 (7th Cir. 2004). Prisoners of a "supermax" prison brought a suit challenging their conditions of confinement. After the plaintiff class was certified and a preliminary injunction was entered, a consent decree was approved by the court. The prisoners subsequently moved to enforce the decree. The district court entered an order directing the installation of air conditioning and the defendants appealed. The appeals court affirmed, finding that the district court's order was not a grant of "prospective relief" that was subject to the requirements of the Prison Litigation Reform Act (PLRA). (Wisconsin Secure Program Facility)

U.S. District Court
TOILETS

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

U.S. District Court
LETHAL INJECTION

Reid v. Johnson, 333 F.Supp.2d 543 (E.D.Va. 2004). A death row inmate filed a § 1983 action alleging the means by which the state intended to carry out his execution violated the Eighth Amendment ban on cruel and unusual punishment. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. On remand, the district court denied the inmate's motion for a preliminary injunction. The court found that the inmate was not likely to suffer irreparable harm as the result of the state's mechanism for carrying out the sentence of death by lethal injection. The court held that the possibility that there could be some minor difficulty locating the vein for lethal injection did not subject the inmate to offensive punishment, in violation of the Eighth Amendment. The inmate alleged that there was a possibility that the sedative to be used would not function properly, but the court noted that the chance the inmate would be conscious of any pain was less than 6/1000 of one percent. The court noted that the inmate had chosen lethal injection over the constitutionally-acceptable method of electrocution. (Virginia Department of Corrections)

U.S. District Court RESTRAINTS FOOD ISOLATION TOILETS	<p><i>Ziamba v. Armstrong</i>, 343 F.Supp.2d 173 (D.Conn. 2004). A state inmate filed a civil rights action alleging that prison officials failed to provide constitutionally adequate health care, failed to protect him from the use of excessive force, and used excessive force. The district court granted summary judgment for the defendants in part, and denied it in part. The district court held that fact issues remained as to whether a prison supervisor adequately trained correctional officers with respect to the use of four-point restraints, and failed to respond to reports and complaints of use of force against the inmate. The court denied qualified immunity, finding that a reasonable prison official ought to have understood in 1998 that it was a constitutional violation to restrain a mentally ill prisoner for twenty-two hours, with no penal justification, no food or water, and no access to a bathroom. (Northern Correctional Institution, Connecticut)</p> <p>2005</p>
U.S. District Court MEDICAL CARE SMOKE	<p><i>Bartlett v. Pearson</i>, 406 F.Supp.2d 626 (E.D.Va. 2005). A state prison inmate who was a non-smoker suffering from asthma, brought a § 1983 Eighth Amendment action against corrections officials alleging that being housed in a cell and housing unit with inmates who smoked endangered his health. The district court granted summary judgment in favor of the defendants. The court held the officials were not deliberately indifferent to the inmate's request for non-smoking housing and they were not indifferent to the inmate's asthma. The court noted that an allegation that exposure to environmental tobacco smoke (ETS) posed an unreasonable risk of serious damage to future health is cognizable under the Eighth Amendment. The prison had a policy aimed at limiting, when practicable, inmates' exposure to ETS, and they twice offered the inmate the option of residing in special or segregated housing. The inmate was moved to a non-smoking area after being housed with smokers for a total of 17 weeks, which the court found to be "not unreasonable" given the level of crowding at the prison and the fact that safety concerns took precedence over smoking preferences. (Sussex II State Prison, Virginia)</p>
U.S. Appeals Court LETHAL INJECTION	<p><i>Beardslee v. Woodford</i>, 395 F.3d 1064 (9th Cir. 2005). A death row inmate filed a § 1983 action alleging that his execution pursuant to a state's lethal injection protocol would violate his Eighth Amendment right to be free from cruel and unusual punishment and his First Amendment right to freedom of speech. The district court denied the inmate's motion for a preliminary injunction and the inmate appealed. The appeals court affirmed, and the United States Supreme Court denied certiorari. The appeals court held that the inmate failed to establish the likelihood that he would be sufficiently conscious during the administration of lethal drugs to experience pain. (California State Prison at San Quentin)</p>
U.S. Appeals Court SANITATION TEMPERATURE TOILETS	<p><i>Hearns v. Terhune</i>, 413 F.3d 1036 (9th Cir. 2005). A state prison inmate brought a § 1983 action alleging violation of his Eighth Amendment rights related to an attack in prison, and inhumane conditions in a disciplinary segregation unit. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate's allegations stated a claim that conditions were sufficiently serious to form the basis for an Eighth Amendment violation. The inmate alleged that there was a lack of drinkable water in the prison yard, where temperatures exceeded one hundred degrees. The inmate also alleged that conditions in disciplinary segregation created serious health hazards, including toilets that did not work, sinks that were rusted, and stagnant pools of water that were infested with insects. (Calipatria State Prison, California)</p>
U.S. Appeals Court SMOKE-FREE ENVIRONMENT	<p><i>Kelley v. Hicks</i>, 400 F.3d 1282 (11th Cir. 2005). A prisoner brought an action under § 1983 alleging that prison officials were deliberately indifferent to his future health by allowing him to be exposed to harmful levels of environmental tobacco smoke while he was incarcerated. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court held that the prisoner failed to establish that the warden and assistant warden were deliberately indifferent to the prisoner's future health. The court noted that the facility had a no-smoking policy in place, and any prisoner caught smoking within the facility would be disciplined. According to the court, the prisoner failed to show that the ventilation system was not sufficient. The court found that the prisoner showed at most, that the warden and assistant warden were negligent in enforcing the non-smoking policy. (Coffee County Correctional Facility, Georgia)</p>
U.S. District Court LIGHTING	<p><i>King v. Frank</i>, 371 F.Supp.2d 977 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging undue restrictions on telephone usage and access to written publications, improper cell illumination, and failure to provide adequate mental health care. The district court granted summary judgment in favor of the officials. The court held that the inmate was not deprived of a basic human need by the presence of a constantly illuminated nine-watt fluorescent light in his cell, even though he alleged that the light caused him sleeplessness and other problems. The court noted that a registered nurse and a psychologist both examined the inmate and concluded that he suffered no ill effects. The court found that the mental health care that the inmate received was adequate, noting that the inmate received treatment not only from the prison's psychological services unit, but also from his unit's supervisor as well. (Waupun Correctional Institution, Wisconsin)</p>

U.S. Appeals Court
SMOKE

Larson v. Kempker, 405 F.3d 645 (8th Cir. 2005). A state inmate brought an action under § 1983 and the Prison Litigation Reform Act (PLRA), alleging that he was not adequately protected from exposure to second-hand cigarette smoke while he was imprisoned. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed, finding that the inmate was not entitled to a preliminary injunction. The court held that there was no objective evidence that the inmate was subjected to unreasonably high levels of environmental tobacco smoke (ETS) and no scientific tests were conducted to establish the levels of ETS in his cell. (Crossroads Correctional Center, Missouri)

U.S. Appeals Court
SMOKE

Larson v. Kempker, 414 F.3d 936 (8th Cir. 2005). An inmate brought a civil rights action against prison officials alleging that he was exposed to excessive cigarette smoke while he was confined. The district court awarded summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed, finding that evidence was insufficient to establish that the inmate was exposed to unreasonable levels of environmental tobacco smoke (ETS). The court noted that the inmate's expert performed no scientific tests to establish the level of ETS in the inmate's cell, and the inmate did not present any other reliable basis to estimate levels of ETS to which he was exposed, or evidence concerning how those levels of ETS would affect his future health. (Crossroads Correctional Center, Missouri)

U.S. District Court
FAILURE TO PROTECT

Little v. Shelby County, Tenn., 384 F.Supp.2d 1169 (W.D.Tenn. 2005). An inmate brought a § 1983 action against a county and sheriff, alleging that he had been raped in jail in violation of his Eighth Amendment rights. The county stipulated to liability and an order of injunctive relief was issued. Later, the district court found the county in contempt, and the county sought to purge itself of the contempt finding. The court entered a purgation order. The court held that the county and sheriff complied with the Eighth Amendment and purged themselves of contempt through the adoption of a structured reform to correct conditions that included violence, rape and gang control among inmates. In reaching its conclusion, the court considered whether officials took all reasonable steps within their power to comply with the order, which included whether they marshaled their own resources, asserted their highest authority, and demanded the results needed from subordinate persons and agencies in order to effectuate the course of action required by the order. The court praised the county, noting that it had adopted a focused, systemic and information-driven structural reform based on critical expert assessment of essential institutional functions. The county adopted a 14-point remedial scheme that included implementing direct supervision management of inmate cellblocks, improving population management, collecting and utilizing data, and installing an objective inmate classification system. (Shelby County Jail, Tennessee)

U.S. District Court
TEMPERATURE
VENTILATION

Moody v. Kearney, 380 F.Supp.2d 393 (D.Del. 2005). A state inmate filed a § 1983 action alleging that prison officials locked him in an unventilated room, causing him to suffer a severely debilitating heat stroke. The district court dismissed the case and the inmate appealed. The appeals court reversed and remanded. On remand, the district court granted summary judgment for the defendants in part, and denied it in part. The court held that the inmate stated a claim for deliberate indifference to his serious medical needs and that fact issues remained as to whether a private contractor that provided medical services for the prison had a policy of not protecting vulnerable inmates from high temperatures. The inmate alleged that he was receiving anticholinergic medication and was therefore particularly vulnerable to heat stroke, and that prison officials knew about this vulnerability but acted with deliberate indifference by keeping him in a room with no windows, no ventilation, or access to running water when the temperature inside the facility was 120 degrees. (State Correctional Institution, Georgetown, Delaware)

U.S. Appeals Court
SMOKE

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. District Court
ISOLATION
LIGHTING

Scarver v. Litscher, 371 F.Supp.2d 986 (W.D.Wis. 2005). A state prison inmate sued officials seeking damages for their alleged indifference to his illness and challenging his conditions of confinement. The district court entered judgment in favor of the officials. The court held that the officials did not show deliberate indifference to the inmate's mental illness condition, because he was examined and prescribed various antipsychotic medications. The inmate alleged that the only deficiency in his treatment was that officials failed to provide art supplies when they were requested. The court found that there were fact issues as to whether the inmate was subjected to conditions that were severe enough to violate the Eighth Amendment, but that the officials had qualified immunity from the inmate's damages suit. The court held that placing the mentally ill inmate in a continuously-illuminated maximum security cell without windows was not clearly

established to be an Eighth Amendment violation at the time they placed the inmate in the most extreme isolation section of the maximum security prison. (Wisconsin Secure Program Facility)

U.S. Appeals Court
SMOKE
VENTILATION

Talal v. White, 403 F.3d 423 (6th Cir. 2005). An inmate brought an action against a state corrections department and individual officials alleging that his exposure to environmental tobacco smoke (ETS) violated his Eighth Amendment rights. The district court dismissed the claim and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner stated a claim that satisfied the objective component of the test for determining deliberate indifference based on exposure to ETS, by alleging that he had been subjected to excessive levels of ETS at the hands of both staff and other inmates and that the prison's ventilation system merely re-circulated smoke-filled air. The inmate provided medical documentation that he suffered from an ETS allergy and establishing that smoke caused him sinus problems and dizziness. The inmate's complaint and exhibits indicated that prison officials were aware of the inmate's ETS allergy and that they smoked and allowed prisoners to smoke in the prison's non-smoking units. (Turney Center Industrial Center, Tennessee)

U.S. District Court
MEDICAL CARE

Valdes v. Crosby, 390 F.Supp.2d 1084 (M.D.Fla. 2005). The estate of an inmate who died in prison after an alleged beating by correctional officers brought a § 1983 action against prison officials and prison nurses. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that summary judgment was precluded by a genuine issue of material fact on a supervisory liability claim against a warden. The court concluded that nurses were not liable under § 1983 where a nurse's physical examination of the inmate following alleged abuse by officers during the extraction of the inmate from his cell revealed that the inmate suffered only minor injuries consistent with those seen by medical personnel in prisons following cell extractions. The court held that any delay in the nurse's response to a call for immediate medical help for the inmate did not create or exacerbate injuries the inmate received from an alleged beating by prison officers, since the nurse arrived within minutes of receiving the call and officers were attending to the inmate's medical needs by administering cardiopulmonary resuscitation. (Florida State Prison)

U.S. Appeals Court
CAPITAL PUNISHMENT
LETHAL INJECTION

White v. Johnson, 429 F.3d 572 (5th Cir. 2005). A prisoner who had been sentenced to death brought a § 1983 action seeking injunctive relief, alleging that the state's method of execution by lethal injection violated his constitutional rights. The district court dismissed the action because the inmate had waited for more than six years to challenge the procedures the state had been using for his entire stay on death row. (Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
LIGHTS
LIGHTING

Wills v. Terhune, 404 F.Supp.2d 1226 (E.D.Cal. 2005). A state prison inmate brought a § 1983 action alleging that constant illumination in the prison's security housing unit constituted cruel and unusual punishment. The inmate moved for a preliminary injunction. The court denied the motion. The court held that the constant illumination did not constitute an unsafe condition of confinement and that the defendants established a valid security purpose for the lighting. The inmate alleged that the low wattage bulb prevented his sleep, but conceded that it was not bright enough to read or write by. (California State Prison, Corcoran)

2006

U.S. District Court
SMOKE

Abdullah v. Washington, 437 F.Supp.2d 137 (D.D.C. 2006). An inmate brought a pro se civil rights action under § 1983 against the District of Columbia and certain jail officials, in their individual and official capacities, seeking damages related to his alleged exposure to second-hand tobacco smoke while confined at a jail. The district court granted the officials' motion to dismiss in part, and denied in part. The court held that the inmate's allegations that he was subjected to an intolerable level of second-hand tobacco smoke while confined at the jail, and that jail officials were deliberately indifferent to his condition because they did not resolve the numerous grievances he filed on the issue, were sufficient to support an Eighth Amendment claim based on exposure to environmental tobacco smoke (ETS). The court found that the inmate's Eighth Amendment right to be free from levels of second-hand smoke that posed an unreasonable risk of serious damage to the inmate's future health was clearly established, and thus, the officials were not entitled to qualified immunity. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. District Court
USE OF FORCE

Avratin v. Bermudez, 420 F.Supp.2d 1121 (S.D.Cal. 2006). A prisoner who was involved in a fight with another inmate brought a civil rights action against a corrections officer, alleging that the officer used excessive force in attempting to stop the fight. The officer moved for summary judgment and the district court granted the motion. The court held that the officer's alleged conduct of firing a wooden projectile from a launcher directly at an unarmed prisoner involved in a fight with another inmate, causing a severe injury to the inmate's leg, violated the prisoner's Eighth Amendment right to be free from cruel and unusual punishment. The court noted that no correctional officers, prison personnel or other inmates were at immediate risk during the fight

and the officer failed to use any lesser degree of force before firing his launcher. However, the court found that the officer was entitled to qualified immunity for his alleged conduct because it would not be clear to a reasonable officer that the alleged conduct was unlawful, as a reasonable officer could conclude that the fight posed a risk of serious bodily injury, the officer aimed at the prisoner's leg, virtually eliminating the risk that the prisoner would suffer a life-threatening injury, the fight occurred in a heightened security setting with numerous other inmates present in the yard, and the prisoner and other inmate refused orders to desist. (Centinela State Prison, California)

U.S. District Court
SMOKE-FREE
ENVIRONMENT

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. (Howard R. Young Correctional Institution, Delaware)

U.S. District Court
LETHAL INJECTION

Evans v. Saar, 412 F.Supp.2d 519 (D.Md 2006). A prison inmate sued a state under § 1983 seeking a temporary restraining order barring his execution by lethal injection, pending review of his claim that a three-drug protocol constituted cruel and unusual punishment in violation of the Eighth Amendment. The district court denied the motion. The court found that intravenous sodium pentothal, administered in a massive dose, would ensure profound unconsciousness before the lethal drugs pancuronium bromide (Pavulon) and potassium chloride were administered. The court noted that while there were problems with the inmate's veins caused by years of drug abuse, medical experts confirmed they were adequate, and placement of medically-trained observers in the room next to the execution chamber was an acceptable compromise between the need to have them available and the need for them to remain anonymous. (Maryland Department of Public Safety and Correctional Services)

U.S. Appeals Court
OUTDOOR EXERCISE
SEGREGATION

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. (Limon Correctional Facility, Colorado)

U.S. Appeals Court
FOOD

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 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. As a result was not served. Because he skipped so many meals he lost 45 pounds. (Wisconsin Maximum Security Facility, "Supermax")

U.S. Appeals Court
ISOLATION
FOOD
CLOTHING
BEDDING

Gillis v. Litscher, 468 F.3d 488 (7th Cir. 2006). A state prisoner brought a § 1983 claim against prison officials, alleging that a behavioral modification program imposed on him violated his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court vacated and remanded, finding that fact issues precluded summary judgment. According to the court, there were fact issues as to whether the prisoner, who was subjected to a behavioral modification program, was denied the

minimal civilized measure of life's necessities and whether prison officials acted with disregard of a substantial risk of serious harm to the prisoner. The appeals court opinion opened with the following statement. *"Stripped naked in a small prison cell with nothing except a toilet; forced to sleep on a concrete floor or slab; denied any human contact; fed nothing but 'nutri-loaf'; and given just a modicum of toilet paper-four squares-only a few times. Although this might sound like a stay at a Soviet gulag in the 1930s, it is, according to the claims in this case, Wisconsin in 2002. Whether these conditions are, as a matter of law, only "uncomfortable, but not unconstitutional" as the State contends, is the issue we consider in this case."* The facility is an all-segregation facility, designed to house recalcitrant inmates. At the time of this case, the facility used a five-level system of inmate classification, with Level One being the most restrictive. All inmates were placed in Level One upon their arrival at the prison. (Wisconsin Secure Prog. Facil., Boscobel)

U.S. District Court
EXERCISE

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

U.S. District Court
DOUBLE CELLING
SANITATION
SMOKE

Jones v. Goord, 435 F.Supp.2d 221 (S.D.N.Y. 2006). Inmates brought an action against New York prison officials, challenging the double-celling policy at maximum-security prisons. Double-celling is a practice in which two prisoners are housed in a cell originally designed for one person. The complaint was filed in 1995, and was effectively stayed for some time pending litigation of a companion case challenging the same practice in medium security prisons. After a full trial on the merits, the district court in the medium security case denied the plaintiffs any relief.

The district court dismissed all of the inmates' class claims, but reserved decisions on individual plaintiffs' claims for damages under the Eighth Amendment and the First Amendment. The court held that the practice of double-celling, and the undesirable conditions allegedly created by double-celling of inmates, including facts that inmates were forced to sleep near a toilet, were exposed to cellmates' odors, and kept excess personal property in their cells, did not violate the Eighth Amendment.

The court found that Muslim inmates' claim that double-celling interfered with their First Amendment right to free exercise of religion was not moot after they were no longer being double-celled, where many of the inmates were double-celled on numerous occasions for short periods of time, and the policy of double-celling inmates continued. The defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. According to the court, even assuming that the policy of double-celling some inmates in New York's maximum-security prisons burdened religious practices of Muslim inmates by making it difficult for them to pray in their cells. According to the court, the policy was rationally related to the legitimate goal of finding sufficient bed space to house all maximum security inmates, and thus did not violate the inmates' right to free exercise of religion. The court ruled that the inmates were not entitled to amend their complaint to add a claim under the Religious Land Use and Institutionalized Persons Act (RLUIPA).

The court noted that the Eighth Amendment does not guarantee prisoners freedom from any and all sorts of unsavory environs, and that to the extent that conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.

According to the court, the practice of double-celling inmates did not result in a substantial risk of serious harm to inmates due to violence, in violation of the Eighth Amendment, where incident reports indicated that six years after the implementation of the double-celling policy, inmates generally faced a lower risk of assault than they did before the policy was implemented, and there was no evidence that any under-reporting of assaults affected the reporting of incidents in double cells more than the reporting of incidents generally.

The court also found that injury and disease allegedly caused by double-celling did not create an unreasonable risk of serious damage to inmates' health, in violation of the Eighth Amendment, noting that although nine inmates had been injured getting into or out of the top bunk in their cells, and six inmates caught colds from their cellmates, there was no evidence that the design or placement of the bunks was unsafe, or that any inmate actually contracted, or was even exposed to, a serious disease from his cellmate in a double cell.

The court ruled that alleged exposure to excessive levels of secondhand smoke in double cells did not create an unreasonable risk of serious damage to inmates' future health, in violation of the Eighth Amendment, where the state had banned smoking in all its prison facilities, and there was no evidence that inmates in double cells were exposed to unreasonably high levels of secondhand smoke after that policy was adopted. (New York Department of Correctional Services)

U.S. District Court
SEGREGATION

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. Appeals Court
LETHAL INJECTION

Morales v. Hickman, 438 F.3d 926 (9th Cir. 2006). A death row inmate brought a § 1983 action against a warden, seeking to enjoin a state from executing him by lethal injection, and alleging that, due to a combination of circumstances, execution by lethal injection pursuant to a prison's protocol would constitute cruel and unusual punishment. The inmate petitioned for a stay of execution. The district court entered an order permitting the execution and the inmate appealed. The court of appeals held that the district court did not abuse its discretion in modifying the lethal injection protocol so as to give the state the option of having an anesthesiologist present to insure that the inmate was unconscious during the lethal injection procedure. The district court found substantial questions as to whether the protocol would constitute cruel and unusual punishment by creating undue risk that the inmate would suffer excessive pain, and as to whether a person rendered unconscious by sodium thiopental might regain consciousness. The court-modified protocol did not render the anesthesiologist powerless, but clearly contemplated that he or she would have the authority to take steps to immediately place or return the inmate into an unconscious state or to alleviate pain if necessary. The inmate had alleged that a combination of circumstances, including the specific drugs chosen, the procedure by which the drugs are administered, and the absence of medically trained personnel overseeing the execution, created a foreseeable and undue risk that he would experience unnecessary and wanton pain constituting cruel and unusual punishment under the Eighth and Fourteenth Amendments. (California State Prison at San Quentin)

U.S. District Court
COMMISSARY
CONDITIONS

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment. The court found that the inmate had no constitutionally protected right to purchase food or other items as cheaply as possible through the prison commissary, and therefore prison officials did not violate the inmate's Eighth Amendment rights by allegedly overcharging for commissary products. (Delaware Correctional Center)

U.S. District Court
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
LIGHTING
NOISE
SEGREGATION

Scarver v. Litscher, 434 F.3d 972 (7th Cir. 2006). A state prisoner brought a civil rights action against officials at a "supermax" prison, alleging that his conditions of confinement had aggravated his mental illness. The district court granted summary judgment for the officials and the prisoner appealed. The appeals court affirmed, finding that the officials did not unconstitutionally subject the prisoner to cruel and unusual punishment, absent evidence that they knew that the conditions were making his mental illness worse. According to the court, prison authorities must be given considerable latitude in the design of measures for controlling homicidal maniacs without exacerbating their manias beyond what is necessary for security. The prisoner alleged that the heat in the cells in the Summer interacted with the his antipsychotic drugs and caused him extreme discomfort, and that the constant illumination of the cells also

disturbs psychotics. The prisoner alleged that the low level of noise, without audiotapes, a radio, or any source of sound, prevented him from stilling the voices in his head. (Wisconsin Secure Program Facility)

U.S. Appeals Court
LETHAL INJECTION

Smith v. Johnson, 440 F.3d 262 (5th Cir. 2006). A death row inmate sought injunctive relief pursuant to § 1983, alleging that the lethal injection method of execution used by Texas caused excruciating pain in violation of the Eighth Amendment. The district court dismissed the case and the inmate appealed. The court of appeals held that the inmate's delay in bringing the challenge was not excusable and that the inmate was not entitled to a stay of execution pending a United States Supreme Court's decision in a case that also involved a challenge to this method of execution. The court noted that the inmate's direct appeal had been final for more than nine years and that the lethal injection procedure had been used by Texas during his entire stay on death row. (Texas Department of Criminal Justice, Correctional Institutions Division, Huntsville Unit)

U.S. District Court
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
LIGHTING

Walker v. Woodford, 454 F.Supp.2d 1007 (S.D.Cal. 2006). State inmates filed a § 1983 action alleging that prison officials violated their Eighth Amendment rights by refusing to turn off lights in their cells. The inmates alleged that the light prevented them from sleeping adequately, and that this has caused a variety of sleep-related problems. The district court ruled that the state prison's policy prohibiting inmates from covering lights in their cells did not violate the inmates' equal protection rights, even though the policy did not apply in other facilities in the state, absent an allegation that prison officials implemented the policy with the intent to discriminate against inmates, that other inmates at the facility were treated differently, or that inmates at other facilities were similarly situated. (Calipatria State Prison, California)

U.S. District Court
SMOKE

Williams v. District of Columbia, 439 F.Supp.2d 34 (D.D.C. 2006). A former inmate filed a pro se § 1983 action seeking damages for alleged exposure to second-hand tobacco smoke while he was confined in jail. The district court denied the defendants' motion for summary judgment. The court held that the former inmate's allegations that while he was in jail he was subjected to an intolerable level of environmental tobacco smoke (ETS), that such exposure caused health problems at the time he was confined and posed a risk to his future health, and that the individual defendants were deliberately indifferent to his condition, if true, were sufficient to establish an Eighth Amendment violation. The court found that genuine issues of fact existed, precluding summary judgment. The inmate alleged that inmates and staff in his housing unit smoked tobacco, the unit did not have adequate ventilation or windows or doors that could be opened to remove the tobacco smoke, and his cellmate smoked five packs of cigarettes a day and kept a homemade toilet paper wick burning at all times for the purpose of lighting cigarettes. The inmate said that he experienced nausea and nosebleeds, and he filed a number of grievances. (District of Columbia Department of Corrections, Central Detention Facility)

2007

U.S. Appeals Court
INJURY
WORK
SAFETY

Ambrose v. Young, 474 F.3d 1070 (8th Cir. 2007). The personal representative for the estate of a state prisoner who was electrocuted while on a prison work detail brought a § 1983 action against state corrections officials. The district court denied the officials' motion for summary judgment and they appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the deliberate indifference standard applied; (2) the corrections officer in charge of the prisoner's work crew was deliberately indifferent to the serious risk of the prisoner's electrocution; (3) the corrections officer was not entitled to qualified immunity; (4) the supervisory official for the DOC was not deliberately indifferent; and (5) the warden was not deliberately indifferent to the lack of training of the corrections officer in charge of the work crew. The court noted that the prohibition against cruel and unusual punishment applies to the conditions of confinement, and that prison work assignments fall under the ambit of conditions of confinement.

According to the court, the Eighth Amendment forbids knowingly compelling an inmate to perform labor that is beyond an inmate's strength, dangerous to his or her life or health, or unduly painful, and requires supervisors to supervise and train subordinates to prevent the deprivation of the inmate's constitutional rights. The prisoner was on an Emergency Response Team (ERT) when he was killed. ERTs are comprised of minimum-security inmates from South Dakota's four state penitentiaries. The ERTs are dispatched to natural disaster clean-up sites, where they assist in removing downed trees and other debris. The inmates are required to comply with correctional officers' orders and conduct themselves appropriately. The only training the inmate received was watching a chainsaw safety training video. The court held that qualified immunity will be defeated in a § 1983 claim if a government official knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the plaintiff, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury. It is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. The court found that the corrections officer had the opportunity to deliberate and think before the electrocution incident occurred. The prisoner was electrocuted by a downed power line and the officer knew that the dangling, live power line created a substantial risk of harm, and despite the risk, the officer told the prisoner and other inmates to stomp out a non-threatening fire within arms reach of the line. The court held that the corrections officer was not entitled to qualified immunity for his deliberately indifferent conduct, in ordering the prisoner and other inmates to stomp out a fire near a dangling live power line, where the law was clearly established at the time of the electrocution incident that knowingly compelling a prisoner to perform labor that was dangerous to his life or health violated the Eighth Amendment. (South Dakota Department of Corrections)

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
LETHAL INJECTION

Harbison v. Little, 511 F.Supp.2d 872 (M.D.Tenn. 2007). A state death row inmate brought a § 1983 action alleging that his execution pursuant to Tennessee's lethal injection protocol would violate his Eighth Amendment right to be free from cruel and unusual punishment. A bench trial was held. The court entered judgment for the inmate and ordered injunctive relief. The court held that the three-drug protocol used by the state presented an inherent and unnecessary risk of serious pain. The court found that the Commissioner of Corrections knowingly disregarded such risk by rejecting a proposed one-drug protocol recommended by a protocol committee. The court enjoined the state from executing the inmate under the current execution procedures for lethal injection. (Tennessee Department of Corrections)

U.S. District Court
MEDICAL CARE

Lee v. Frederick, 519 F.Supp.2d 320 (W.D.N.Y. 2007). A state prison inmate brought a § 1983 suit against corrections staff, claiming deliberate indifference to his serious medical needs, in violation of his Eighth Amendment rights. The defendants moved for summary judgment. The district court granted the motion. The court held that placing the inmate on "TB hold" status unless he consented to take TB medication did not constitute cruel and unusual punishment in violation of the Eighth Amendment. The court noted that the inmate's TB test was negative and that he shared a cell with an inmate who was not on TB hold, but other test results indicated that the inmate's immune system was not functioning properly, and conditions at the facility made it impracticable to completely isolate the inmate from the rest of the population.

The court found that a delay of six or seven hours in obtaining treatment for the inmate's eye condition after he reported the condition to a nurse did not constitute deliberate indifference to the inmate's serious medical needs in violation of the Eighth Amendment's prohibition of cruel and unusual punishment. According to the court, the inmate received treatment at a hospital and made a full recovery, and even assuming that the inmate was in pain during the delay, there was no indication that a nurse or a physician assistant who responded to the report deliberately delayed taking action for the purpose of causing the inmate pain or to prolonging his suffering. (Five Points Correctional Facility, New York)

U.S. District Court
CONDITIONS
EXERCISE
ISOLATION
SEGREGATION

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. Appeals Court
FAILURE TO PROTECT
THREATS

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

U.S. District Court
SEARCHES

Teahan v. Wilhelm, 481 F.Supp.2d 1115 (S.D.Cal. 2007). An indigent state prisoner brought a § 1983 action against two correctional officers, challenging the conditions of his confinement. The court dismissed the action. The court held that the prisoner's allegations that prison officials searched his cell numerous times over the course of one evening, resulting in several items of the prisoner's property being seized, did not state a claim of cruel and unusual punishment in violation of Eighth Amendment. (Centinela State Prison, California)

U.S. District Court
CONDITIONS
EXERCISE
ISOLATION
SEPARATION

Wilkinson 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. District Court
SMOKE-FREE
ENVIRONMENT

Abdullah v. Washington, 530 F.Supp.2d 112 (D.D.C. 2008.) An inmate filed a § 1983 action seeking damages for violation of his Eighth Amendment rights stemming from his alleged exposure to second-hand tobacco smoke while confined at a District of Columbia detention facility. The district court granted summary judgment in favor of the defendants. The court held that the plaintiff's expert's testimony failed to demonstrate a causal relationship between environmental tobacco smoke (ETS) and the increased risk of harm to the inmate. The court noted that the expert was a biophysicist, not a medical doctor, never went to the jail, and never examined the inmate or his medical records. The court held that the officials were not deliberately indifferent to the health risks caused by environmental tobacco smoke (ETS), even if the officials inadequately enforced no-smoking rules, where a non-smoking policy was in existence during the inmate's incarceration, and the jail was undergoing extensive renovation to improve air quality, including the ventilation system. (District of Columbia Department of Corrections, Central Detention Facility)

U.S. District Court
LETHAL INJECTION

Arthur v. Allen, 574 F.Supp.2d 1252 (S.D.Ala. 2008). A death-row inmate sought a temporary restraining order (TRO) against a contemplated autopsy on his body following his lethal injection. The district court denied an injunction and dismissed the case. The court held that the inmate was ineligible for the requested TRO because of his inequitable conduct, and the inmate otherwise had no substantial likelihood of success on the merits of claim. The court noted that the inmate conducted himself in a manner irreconcilable with the basic principles of due diligence, good faith, and conscientious enforcement of his rights. According to the court, the inmate had been aware of the state's intentions to perform an autopsy on his body for many years, the inmate was clearly apprised of his daughter's attempt to block the autopsy via a § 1983 suit and yet elected to remain on the sidelines. When the inmate suddenly invoked the equitable power of the court just two days before his scheduled execution, he offered no explanation for why he could not have initiated the action earlier. (Alabama)

U.S. Appeals Court TEMPERATURE	<i>Bibbs v. Early</i> , 541 F.3d 267 (5 th Cir. 2008). A state inmate brought a claim under § 1983 against corrections officers alleging that he was subjected to severe cold in retaliation for filing grievances. The district court granted the officers' motion for summary judgment and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by a genuine issue of material fact as to whether subjecting the inmate to four straight nights of 20-degree temperatures was sufficiently severe to deter the inmate from filing future grievances. The court also found a genuine issue of material fact as to whether the inmate's actions of writing grievances against corrections officers caused the officers to retaliate by turning on "purge" fans, subjecting the inmate to cold temperatures. (Clements Unit, Amarillo, Texas)
U.S. District Court INJURY	<i>Connolly v. County of Suffolk</i> , 533 F.Supp.2d 236 (D.Mass. 2008). An inmate who fractured his arm after falling from a bunk bed in his cell sued a county, alleging negligence under state law and Eighth Amendment violations under § 1983. The district court entered summary judgment for the county. The court held that the failure of prison officials to equip the inmate's bunk bed with a ladder was not cruel and unusual punishment and that failure to provide ladders for prison bunk beds did not constitute deliberate indifference to the inmate's rights. (Suffolk County House of Corrections, Massachusetts)
U.S. District Court CELLS TEMPERATURE TOILETS	<i>Decker v. Dunbar</i> , 633 F.Supp.2d 317 (E.D.Tex. 2008). <i>Affirmed</i> 358 Fed.Appx. 509. An inmate filed a pro se § 1983 action against prison officials, asserting Eighth and Fourteenth Amendment violations, among other constitutional claims. The officials moved for summary judgment and the district court granted the motion. The court held that the officials' conduct in delaying the inmate's use of a restroom for 30 minutes did not amount to deliberate indifference to his medical needs in violation of the Fourteenth Amendment. According to the court, the delay in taking the inmate to a restroom was caused by the need to conduct a prisoner count, and the inmate failed to demonstrate that he suffered any injury as a direct result of the delay. The court found that placement of the inmate in a holding cell for 90 minutes on a day that the outside temperature reached 95 degrees did not amount to cruel and unusual punishment in violation of the Eighth Amendment. The court noted that even assuming the holding cell was extremely hot, 90 minutes was not an excessive period of time rising to the level of a constitutional violation. (Texas Department of Criminal Justice, Correctional Institutions Division)
U.S. Appeals Court LETHAL INJECTION	<i>Emmett v. Johnson</i> , 532 F.3d 291 (4 th Cir. 2008). A condemned inmate brought a § 1983 action against state correctional officials, seeking equitable and injunctive relief for alleged violations, threatened violations, or anticipated violations of his right to be free from cruel and unusual punishment. The district court granted summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed, finding that the state's lethal injection protocol did not constitute cruel and unusual punishment. The court noted that the injection procedures were supervised by state correctional officials, and executions were carried out by experienced, well-trained personnel. (Greensville Correctional Center, Sussex I State Prison, Virginia)
U.S. Appeals Court MEDICAL CARE TEMPERATURE	<i>Gibson v. Moskowitz</i> , 523 F.3d 657 (6 th Cir. 2008). The representative of the estate of a mentally disabled inmate who died of dehydration in a state prison brought a § 1983 action against a prison psychiatrist and others, alleging deliberate indifference to serious medical needs, and asserting medical malpractice claims. The district court denied the defendants' motion for summary judgment, and subsequently entered judgment, upon a jury verdict, in favor of the representative. The court awarded \$1.5 million in compensatory damages and \$3 million in punitive damages. The psychiatrist appealed. The appeals court affirmed in part and reversed in part. The court held that evidence was sufficient to support a determination that the inmate had an objectively serious medical condition and that the psychiatrist subjectively ignored the inmate's serious medical needs. The court found that the compensatory damages award was not excessive and that the representative was entitled to recover punitive damages. The court found that the punitive damages award was not excessive. According to the court, the psychiatrist was in charge of the inmate's treatment team, he admittedly was aware that the temperature in the observation room where the inmate was held exceeded 90 degrees, and that the combination of the inmate's medication and the room temperature was potentially deadly. A psychiatric expert testified that the inmate's medication affected the part of the brain that regulated body temperature and dissipated heat, and another medical expert testified that the inmate's dehydration occurred over a period of several days. Evidence was presented that during that period, the inmate lost 42 pounds. The psychiatrist never asked for the inmate's temperature to be monitored, even when he had learned from a nurse and other prison employees that the inmate had vomited. The nurse had advised the psychiatrist that the inmate was suffering from dehydration and severe weight loss, and that his condition was deteriorating. The psychiatrist did not examine the inmate, change his medication, or move the inmate to a cooler room. (Riverside Correctional Facility, Michigan)
U.S. District Court MEDICAL CARE	<i>Hart v. Bertsch</i> , 529 F.Supp.2d 1032 (D.N.D. 2008). A state inmate brought a § 1983 action against prison officials for violations of his constitutional right to receive necessary medical care. The inmate alleged that the officials failed to provide adequate medical care for his serious medical needs because he had been housed in a cell that utilized "steam heat," and that officials had not provided him with a medical alert button necessary due to his sleep apnea. The officials moved for summary judgment. The district court granted the motion. The court held that the officials did not act with deliberate indifference toward the inmate's central sleep apnea condition or alleged sensitivity toward "steam heat," as would have violated the Eighth Amendment prohibition against cruel and unusual punishment. The court noted that the inmate had been subjected to a multitude of physical examinations and diagnostic tests in an effort to diagnose the cause of his breathing complaints, and that the treating physician found no medical or factual basis to support another physician's recommendation that the inmate needed to avoid steam heat. According to the court, the inmate failed to follow through with recommended treatments, and the physician had never received a recommendation that the inmate be provided with a medical alert button, nor would such a procedure have been consistent with the inmate's condition. (North Dakota State Penitentiary)

U.S. Appeals Court
FAILURE TO PROVIDE
CARE
MEDICAL CARE
SEGREGATION

Hernandez v. Velasquez, 522 F.3d 556 (5th Cir. 2008). A state prisoner brought a § 1983 action alleging violations of his Eighth Amendment and due process rights. The district court granted summary judgment to all defendants and the prisoner appealed. The appeals court affirmed. The court held that the prisoner failed to show that he was placed at a substantial risk of serious harm when he was placed on lockdown status for 13 months, and therefore he could not show deliberate indifference on the part of prison personnel to his health or safety, as required for prison personnel to be liable under § 1983 for imposing conditions of confinement that constituted cruel and unusual punishment under the Eighth Amendment. The court noted that even if the prisoner suffered from muscle atrophy, stiffness, loss of range of motion and depression, there was no indication that those conditions posed a substantial risk of serious harm. The court held that the prisoner failed to show that prison personnel failed reasonably to address his medical needs, as required for prison personnel to be liable under § 1983 for deliberate indifference to the prisoner's serious medical needs in violation of the Eighth Amendment. The court noted that the sick call requests that the prisoner submitted while he was in lockdown, complaining of muscle soreness, stiffness and loss of range of motion, bore notations from medical staff showing that they responded to the prisoner in timely manner, treating his back pain with heat packs, conducting an x-ray, advising him to take medication for soreness and recommending exercises for soreness and stiffness. 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. Appeals Court
FAILURE TO PROTECT
HARASSMENT
SAFETY
THREATS

Irving v. Dormire, 519 F.3d 441 (8th Cir. 2008). An inmate in the Missouri penal system filed suit under § 1983 against several employees of a state correctional facility, alleging multiple violations of his constitutional rights of due process, access to the courts and freedom from cruel and unusual punishment. The district court granted the defendants' motion for summary judgment on the due process and access to courts claims, but denied the defendants' request for qualified immunity on the Eighth Amendment claim. The parties appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the corrections officers' alleged conduct in opening cell doors so as to allow an inmate to attack the plaintiff inmate was sufficiently serious to support a failure to protect claim. According to the court, the inmate's allegations that a corrections officer made several threats to kill the inmate, have him killed or have him beaten were sufficiently serious to form the basis of an injury, as required to support the inmate's Eighth Amendment claim. The court noted that the inmate's right to be free from threats by corrections officers was clearly established at the time the corrections officer allegedly made death threats against the inmate. According to the court, an officer's alleged conduct in threatening the inmate with a can of pepper spray and another officer's conduct in stating that she wanted the inmate dead did not rise to the level of being objectively credible. The court also held that an officer was on clear notice that his alleged conduct in labeling the inmate a "snitch" or a "rat" unreasonably subjected the inmate to the threat of a substantial risk of serious harm at the hands of his fellow inmates. The officer allegedly made three unsuccessful offers of payment to other inmates to assault the inmate, labeled the inmate a snitch in an effort to induce inmates to attack him and even armed another inmate with a razor blade for use in such an attempt. (Jefferson City Correctional Center, Missouri)

U.S. Appeals Court
LETHAL INJECTION

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 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. District Court
CELLS
MEDICAL CARE
NOISE
TEMPERATURE

Osterback v. McDonough, 549 F.Supp.2d 1337 (M.D.Fla. 2008). Inmates sued corrections officials, alleging that conditions of close management (CM) status amounted to cruel and unusual punishment. Following the grant of the inmates' motion to certify the class, and issuance of an order entering the officials' revised offer of judgment (ROJ), the officials moved to terminate the ROJ pursuant to the Prison Litigation Reform Act (PLRA). The district court granted the motion. The court held that corrections officers were deliberately indifferent in violation of the 8th Amendment when inmates on close management (CM) status who truly were suicidal or otherwise suffered from severe psychological distress declared psychological emergencies. According to the court, the officers failed to summon mental health staff, and inmates thereafter attempted to commit suicide or otherwise harmed themselves, or, in one case, actually committed suicide. But the court found no Eighth Amendment violations with regard to mental health screening procedures, access to mental health care, the level of mental health staff, and instances in which security staff interfered with the delivery of mental health services. The court found that housing provided to inmates on close management (CM) status did not violate the Eighth Amendment, even though the inmates' expert concluded that CM cells were not appropriate due to extreme heat in summer and cold temperatures in winter, inasmuch as the inmates were not subjected to extreme deprivations. The court found that restrictions on the ability of inmates on close management status to speak to each other, including a ban on shouting, did not violate the Eighth Amendment, in that inmates had adequate opportunities to communicate with each other, allowing inmates to speak loudly would jeopardize security, and there were no ready alternatives to prohibiting yelling or other disruptive behavior. The court held that termination of the revised offer of judgment (ROJ), which was previously adopted by the district court as a final order and judgment, was appropriate under the Prison Litigation Reform Act (PLRA) in that isolated instances of prison staff's failure to appropriately respond to a bona fide psychological emergency of inmates in close management status did not create a current and ongoing violation of the class members' Eighth Amendment rights. (Everglades Corr'l Institution, Florida)

U.S. Appeals Court TORTURE	<i>Rasul v. Myers</i> , 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 <i>Bivens</i> cause of action. The defendants moved to dismiss and the district court granted the motion in part and denied the motion as to the RFRA claim. Both sides appealed. The district court affirmed in part and reversed as to the RFRA claim. The court held that the acts of torture allegedly committed against aliens detained at the military base in Cuba were “within the scope of employment” of military personnel who were allegedly committing such acts, for the purpose of deciding whether the United States should be substituted as defendant. The court found that the aliens were without property or presence in the United States and therefore lacked any constitutional rights and could not assert a <i>Bivens</i> 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 EXERCISE SEARCHES	<i>Sanchez Rodriguez v. Departamento de Correccion y Rehabilitacion</i> , 537 F.Supp.2d 295 (D.Puerto Rico 2008). An inmate filed a § 1983 action alleging that Puerto Rico prison officials denied him his constitutional right to enjoy daily recreational time outside of his cell because he refused to submit to visual body cavity searches. After dismissal of his complaint, the inmate filed a motion for reconsideration. The district court denied the motion. The court held that the searches did not constitute cruel and unusual punishment. According to the court, the requirement that inmates submit to visual body cavity searches in order to leave their cells for recreation was needed to preserve internal order and institutional security, and thus did not constitute cruel and unusual punishment in violation of the Eighth Amendment. (Maximum Security Prison, Ponce, Puerto Rico)
U.S. Appeals Court CONDITIONS SANITATION	<i>Townsend v. Fuchs</i> , 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)
U.S. Appeals Court LETHAL INJECTION	<i>Walker v. Epps</i> , 550 F.3d 407 (5 th Cir. 2008). Death row inmates brought a § 1983 action challenging the constitutionality of a state’s lethal injection protocol, and seeking a preliminary injunction to prevent the state from executing them during the pendency of their action. The inmates’ motion for a stay pending appeal was denied. The district court entered summary judgment in the state’s favor, and the inmates appealed. The appeals court affirmed. The court held that the action was subject to the statute of limitations for general personal injury actions and the cause of action accrued on the date the inmates’ convictions and sentences became final on direct review, or on the date on which the challenged protocol was adopted. The court found that the state did not fraudulently conceal its lethal injection protocol. (Mississippi Department of Corrections and Mississippi State Penitentiary)
U.S. District Court LETHAL INJECTION	<i>Walker v. Epps</i> , 587 F.Supp.2d 763 (N.D.Miss. 2008). Death row inmates brought a § 1983 action against prison officials, challenging the constitutionality of a state’s lethal injection protocol, and seeking a preliminary injunction to prevent the state from executing them by lethal injection during the pendency of their action. The state moved for summary judgment. The district court granted the motion. The court held that the three-year statute of limitations on the inmates’ § 1983 action accrued on the later date of when their individual cases became final on direct review or on the effective date of the state’s adoption of lethal injection as a means of execution, which was the date when each inmate knew that, as a matter of right, any impediment to setting an execution date had been removed. (Mississippi Department of Corrections)
U.S. District Court LIGHTING MEDICAL CARE SECURITY	<i>Walker v. Woodford</i> , 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
THREATS

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
SMOKE-FREE
ENVIRONMENT

Abuhouran v. U.S., 595 F.Supp.2d 588 (E.D.Pa. 2009). A prisoner brought a negligence action against the United States under the Federal Tort Claims Act alleging prison officials exposed him to excessive amounts of environmental tobacco smoke (ETS). The defendants moved for summary judgment and the district court granted the motion. The court held that the prisoner was precluded, under the discretionary function exception of the Federal Tort Claims Act (FTCA), from challenging the warden's designation of smoking areas, as federal regulations explicitly assigned the exercise of choice or judgment to the warden to designate areas subject to ETS. The court noted that the stated policy considerations for implementing the "no smoking areas" in prisons was to provide a clean air environment and to protect the health and safety of staff and inmates, suggesting the designation of smoking areas was the kind of discretionary function the FTCA exception was meant to shield. The court held that under Pennsylvania law, the prisoner failed to present any medical evidence or expert witnesses to establish a causal connection between his exposure to environmental tobacco smoke (ETS) and his alleged injury, as required to prevail on his negligence claim. The court also held that the prisoner failed to present any evidence of an actual injury. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court
SMOKE-FREE
ENVIRONMENT

Adams v. Banks, 663 F.Supp.2d 485 (S.D.Miss. 2009). An inmate brought a § 1983 action against a warden and other prison officials for exposure to unreasonable levels of secondhand smoke, or environmental tobacco smoke (ETS), and for denial of adequate medical care. The defendants moved for summary judgment, and the inmate moved for summary judgment on his claim against a prison nurse. The district court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate was exposed to unreasonably high levels of environmental tobacco smoke (ETS) from cellmates who smoked in his cell and from other inmates in the area outside his cell. The court also found fact issues as to whether the complaints made by the inmate were sufficient for the warden and assistant supervisor to infer that ETS posed a substantial risk of serious harm to him, such that they acted with deliberate indifference to the inmate's situation. The court found that summary judgment was precluded by genuine issues of material fact as to the seriousness of the inmate's medical condition as a result of exposure to environmental tobacco smoke (ETS) in his cell, as well as to the nature of a prison nurse's responses to the inmate's three sick call request forms complaining of coughing, chest pains, nausea, dizziness, difficulty breathing and vomiting as a result of exposure to ETS. The court held that neither the warden nor the assistant supervisor were involved in a decision to deny the inmate medical care as a result of exposure to secondhand smoke, and thus they were not deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment. (Wilkinson County Corr'l. Facility, Mississippi)

U.S. District Court
LETHAL INJECTION

Chester v. Beard, 657 F.Supp.2d 534 (M.D.Pa. 2009). Pennsylvania death-row inmates brought a class action under § 1983 against Pennsylvania Department of Corrections officials, seeking a permanent injunctive relief against alleged violations of their right to be free from cruel and unusual punishment and their right to due process, arising from Pennsylvania's use of lethal injection as an execution method. The district court denied the defendants' motion to dismiss. The court held that the inmates had Article III standing to bring a § 1983 challenge to the state's use of lethal injection as an execution method, seeking permanent injunctive relief, even if the inmates were not under active death warrants. The court noted that the fact that the inmates were subject to the death sentence conferred a sufficient personal stake in the action to satisfy the standing requirements. The court held that the death-row inmates stated a § 1983 claim against the DOC by alleging that the state's use of lethal injection as an execution method, in the absence of adequate training for those conducting the executions, exposed the inmates to the risk of extreme pain and suffering. (Pennsylvania Department of Corrections)

U.S. District Court
MEDICAL CARE

Conseillant v. Alves, 599 F.Supp.2d 367 (W.D.N.Y. 2009). A prisoner brought a § 1983 action against a physician employed by the New York State Department of Correctional Services (DOCS) alleging improper or inadequate treatment, in violation of his rights under the Eighth Amendment. The district court granted summary judgment in favor of the physician. The court held that the prisoner's allegations that a nurse practitioner misdiagnosed him as suffering from hepatitis, and that the defendant physician knew of this misdiagnosis but allowed the prisoner to think he had a deadly disease, were insufficient to demonstrate deliberate indifference. The court noted that the prisoner's medical treatment was not so inadequate as to amount to "cruel or unusual punishment" prohibited by the Eighth Amendment. According to the court, the prisoner did not establish that he had a "serious medical need," or that the physician ignored any serious medical need. The court noted that the physician was not personally involved in any misdiagnosis, as the evidence only showed that the physician ordered follow-up testing, not that he told the prisoner that he had an active hepatitis infection. (New York State Department of Correctional Services)

U.S. Appeals Court
DISCIPLINE
FOOD

Foster v. Runnels, 554 F.3d 807 (9th Cir. 2009). A female inmate brought a civil rights action against a prison official, alleging the official deprived her of 16 meals over a 23-day period in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The district court entered summary judgment for the official, and the inmate appealed. The appeals court reversed and remanded. The court held that the official's

conduct in allegedly depriving the inmate of 16 meals over a 23-day period for the inmate's failure to remove a paper from the rear window of her cell was a sufficiently serious deprivation of a life necessity, as required to establish violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The court noted that the official's argument-- that the alleged deprivation was due to the inmate's personal choice not to comply with a prison policy-- failed to demonstrate how the inmate's failure to remove a paper from a window jeopardized her safety or security during in-cell feeding. The court found that the official was not entitled to qualified immunity because the inmate's right to adequate meals was clearly established, and the case law alerting prison officials to their obligations to provide inmates with adequate meals should have put the official on notice of her Eighth Amendment rights. (High Desert State Prison, California)

U.S. District Court
CLOTHING
FOOD
MEDICAL CARE
RESTRAINTS
TEMPERATURE

Gay v. Chandra, 652 F.Supp.2d 959 (S.D.Ill. 2009). A state prisoner, who suffered from antisocial and narcissistic personality disorders, brought a § 1983 action against a psychiatrist who treated him in prison, alleging that conditions of confinement to which the psychiatrist subjected him violated the Eighth Amendment. The district court granted summary judgment in favor of the psychiatrist in part, and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the cell where the prisoner was restrained naked was excessively cold, and as to whether the psychiatrist knew that the prisoner would in fact be restrained naked in excessively low temperatures. Similarly, the court found fact issues as to whether the psychiatrist's decision not to allow the prisoner to wear any clothing while he was restrained denied the prisoner a "civilized measure" of life's necessities, and as to whether the psychiatrist was deliberately indifferent to the fact that the prisoner was restrained without clothes. According to the court, summary judgment was precluded by a genuine issue of material fact as to whether the psychiatrist's denial of food to the prisoner while the prisoner was restrained for 32 hours constituted an Eighth Amendment violation. The court found that the decision of the psychiatrist to use therapeutic restraints on the prisoner did not, in and of itself, violate the Eighth Amendment; where the psychiatrist's decision to restrain the prisoner was to protect the prisoner from harming himself. The court found that the psychiatrist was not entitled to qualified immunity in the prisoner's § 1983 action alleging Eighth Amendment violations arising from his medical treatment; where a fact issue existed as to whether the psychiatrist violated the prisoner's Eighth Amendment rights, and the prisoner's right to receive medical treatment for his serious medical needs, and his right not to be punished through conditions of his confinement, was a clearly established right. (Tamm's Correctional Center, Illinois)

U.S. District Court
DISCIPLINE
EXERCISE

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
LETHAL INJECTION

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. District Court
SEARCHES
USE OF FORCE

Jackson v. Gerl, 622 F.Supp.2d 738 (W.D.Wis. 2009). A prisoner brought a § 1983 action against a warden and other prison officials, alleging that the use of a stinger grenade to extract him from his cell constituted excessive force in violation of the Eighth Amendment, and that an abusive strip search following the deployment of the grenade also violated the Eighth Amendment. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that a prison lieutenant's extraction of the prisoner from inside his cell by means of a stinger grenade, which when detonated created a bright flash of light, emitted a loud blast accompanied by smoke, and fired rubber balls, was not "de minimis," as would bar a claim for excessive force under the Eighth Amendment. The court found that summary judgment was precluded by genuine issues of material fact as to whether the extraction of the prisoner from his cell by means of a stinger grenade was malicious and sadistic, or whether the use was in a good-faith effort to maintain or restore discipline. The court held that the prison security director's authorization of the prisoner's extraction by means of a stinger grenade was not malicious and sadistic, as required to establish excessive force under the Eighth Amendment. According to the court, the director was aware that the prisoner was refusing to cooperate, the prisoner had invited officials to "suit up" to "come in and play," and had covered his window and had put water on the floor. The director knew that tasers and incapacitating agents could not be used against the prisoner, and relied on the lieutenant's statements that she had been trained and was certified in the use of the grenade, having never used one himself. The court

held that members of the prison's emergency response unit did not act with deliberate or reckless disregard of the prisoner's rights against excessive force under the Eighth Amendment when they failed to speak out against higher ranking officers from extracting prisoner from cell by means of a stinger grenade. According to the court, the prison's training captain and the commander of the emergency response unit did not provide inadequate training on the use of a stinger grenade, with a deliberate or reckless disregard to the prisoners' Eighth Amendment rights against excessive force, as required to subject the captain to § 1983 liability, even though the captain advised trainees that stinger grenades could be used in a cell and did not tell them of the danger of using the grenade in the presence of water. The captain lacked knowledge that using the grenade in a cell or in the presence of water would likely be an excessive use of force even where immediate weapons would otherwise be justified. The court found that the officials' alleged failure to give the prisoner an opportunity to strip down on his own so that officials could perform a visual inspection of his person rather than be subject to a manual strip search was for a legitimate penological purpose, and thus did not violate the Eighth Amendment as a wanton infliction of psychological pain. The officials decided to manually strip search the prisoner after he had resisted following orders along every step of the way. The court noted that the performance of the strip search in front of a cell, rather than inside a cell, was not done to demean and humiliate the plaintiff, where the cell was not in an area widely visible to prisoners, but rather was at the end of a hall with no cell across from it. (Wisconsin Secure Program Facility)

U.S. District Court
CONDITIONS
SAFETY
SMOKE
WORK

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

U.S. District Court
MEDICAL CARE

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 also held that a claim was stated against the prison's coordinator of healthcare services by alleging that the coordinator failed to investigate whether the prisoner was under a physician's care after his symptoms and complaints indicating a grave and urgent medical condition were reported to her, and to act promptly once she learned that he was not. According to the court, the prison's warden and deputy director were entitled to rely on the judgment of the healthcare risk management coordinator, indicating that she had checked on the prisoner's well-being and assuring them that his medical needs were being addressed, and, thus, they were not liable under § 1983 for deliberate indifference to the prisoner's known serious medical need. The court ordered further discovery to determine whether the director and coordinator failed to put in place policies and procedures requiring that prisoner complaints, symptoms, or diagnoses of a certain type or severity be communicated to officials within a certain time period after the information became available. (Ernest Brooks Correctional Facility, Michigan)

U.S. District Court
FOOD
MEDICAL CARE

Marquez v. Quarterman, 652 F.Supp.2d 785 (E.D.Tex. 2009). A prisoner, proceeding pro se and in forma pauperis, brought a § 1983 action complaining about the prison system's refusal to provide him with dentures. The district held that the prisoner's allegations were sufficient to state an Eighth Amendment "deliberate indifference to medical needs" claim under § 1983, where the prisoner complained about an inability to chew food, stomach cramps, gas, and spastic colon, which resulted in a loss of weight of 13 pounds since his arrival at the prison system. According to the court, the prisoner did not state an Eighth Amendment deliberate indifference claim under § 1983 against the dental clinic, where the hygienist was not involved in the denial of dentures, but instead referred the prisoner to dentists for screening to see if he should receive dentures. The court noted that the hygienist was receptive to the prisoner's request and forwarded his name for consideration, as opposed to being deliberately indifferent by automatically denying his request for dentures. The court allowed the prisoner to proceed with his deliberate indifference claims against a food services officer, who purportedly denied him a soft food diet, despite the prescription for it. (Polunsky Unit, Texas Dept. of Criminal Justice, Institutional Division)

U.S. District Court
EXERCISE

Norwood v. Woodford, 661 F.Supp.2d 1148 (S.D.Cal. 2009). A state inmate brought a § 1983 action against prison officials alleging violation of his Eighth Amendment rights when he was denied outdoor exercise for five weeks. The district court granted summary judgment for the defendants. The court held that the inmate's denial of outdoor exercise for a period of five consecutive weeks during a lockdown at the prison supported the objective component of an Eighth Amendment claim for cruel and unusual punishment, but failed to meet the subjective

component since the officials did not act with deliberate indifference to his needs. The court noted that the lockdown was instituted after an inmate's death in a prison riot involving the attempted murder of prison staff. According to the court, even though the inmate was transferred to the facility after the riot and was not a participant, the lockdown of all prisoners was necessary to ensure immediate and long-lasting safety to inmates and staff. (California State Prison, Corcoran)

U.S. Appeals Court
USE OF FORCE

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. District Court
PRIVACY
SEARCHES

Quinones-Ruiz v. Pereira-Castillo, 607 F.Supp.2d 296 (D.Puerto Rico 2009). A state inmate brought a pro se § 1983 action for injunctive and monetary relief against state prison officials, alleging that the requirement that he squat over a mirror set on the floor in order to have his anus examined when moved to different areas of the facility was conducted in a hostile and denigrating manner, and that it humiliated and frustrated him. The district court dismissed the action. The court found that the inmate's complaint failed to provide any details which could lead the court to conclude that the prison's requirement was unreasonable, or that the inmate was an inmate being held for a minor offense or one that did not involve drugs, weapons, or other forms of contraband, as required to state a § 1983 claim for a violation of the inmate's right against unreasonable searches and seizures or cruel and unusual punishment. (Las Cucharas Correctional Facility, Puerto Rico)

U.S. District Court
TELEPHONE
TOILETS

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)

2010

U.S. District Court
EXERCISE
MEDICAL CARE
TEMPERATURE
VENTILATION
SANITATION

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.

The court held that the prisoner's allegations were sufficient to state a colorable § 1983 claim that he was deprived of personal hygienic items and sanitary conditions in violation of the Eighth Amendment, where the prisoner alleged he was regularly deprived of toilet paper and soap, that he was only allowed to shower twice a week, that he was made to strip in dirty showers full of filth and insects, that the unit in which he resided was littered with food and urine and contained open sewers, and that he suffered illness as a result.

The court found that the prisoner's allegations that he was subjected to a policy of a minimum of five hours of outside exercise per week but that administrative regulations provided for a minimum of seven hours and controlling consent decrees required eight hours, were sufficient to state a colorable § 1983 claim under the Eighth Amendment.

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.

The court ruled that the prisoner's allegations were sufficient to state a § 1983 claim for violations of the Eighth Amendment prohibition against cruel and unusual punishment where the prisoner alleged that he was locked down for 23 and 24 hours in a cell with a steel door, that prison officials disconnected the intake vent that pulled dust and allergens from the cell, that the prison heating system was not on in the winter, and that as a result of these conditions, he suffered cracked lips and nostrils which bled and refused to heal, as well as difficulty breathing and sleeping.

The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim for violations of his Fourth Amendment right to be free of unlawful searches and Eighth Amendment right to be free of cruel and unusual punishment. The prisoner alleged that whenever he was moved from his cell to any other location he was made to stand in a brightly lit shower in full view of female employees, made to strip naked, place his bare feet on a filthy floor covered in insects and scum, spread his buttocks, lift his penis, then put his fingers in his mouth without any opportunity to wash his hands, and that the process was unnecessary because inmates were in full restraints, escorted and solitary at all times.

The court found that the prisoner's allegations were sufficient to state a colorable § 1983 Eighth Amendment claim for violation of his right to be free of cruel and unusual punishment where the prisoner alleged the exercise provided to him was to stand in a completely enclosed cage alone, in extreme heat or cold without water, shade, exercise equipment or urinals, and that as a result he suffered sunburns, cracked and bleeding lips and a lack of desire to exercise, resulting in a loss of physical and mental health. (High Desert State Prison, Nevada)

U.S. District Court
TEMPERATURE
VENTILATION

Blackmon v. Kukuva, 758 F.Supp.2d 398 (S.D.Tex. 2010). A state prisoner brought a civil rights action against prison officials, alleging his exposure to excessive heat violated his Eighth Amendment rights. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether conditions during the state prisoner's incarceration in a prison unit, which included frequent temperatures into the 100's and insufficient ventilation, and which allegedly had a negative effect on the prisoner's personal health, constituted a denial of the minimal civilized measure of life's necessities. The court held that a prison maintenance supervisor did not act with deliberate indifference to the state prisoner's health or safety in responding to the prisoner's grievance about excessive heat, as required to support an Eighth Amendment claim, where he investigated the prisoner's complaint and gave an appropriate response. According to the court, the state prisoner's right not to be subjected to excessive heat was clearly established at the time he was continually exposed to temperatures into the 90s and 100s, in determining whether prison officials who failed to respond to his complaints about the heat were entitled to qualified immunity in his civil rights action. (Garza East Unit, Beeville, Texas Department of Criminal Justice)

U.S. District Court
MEDICAL CARE
RESTRAINTS

Brawley v. Washington, 712 F.Supp.2d 1208 (W.D.Wash. 2010). A female former inmate brought a § 1983 action against the Washington State Department of Corrections and various officials, seeking relief from violations of her constitutional rights that she alleged occurred during the birth of her first child. The Department filed a motion for summary judgment, which the district court granted in part and denied in part. The court held that the female inmate, who was shackled to a hospital bed while giving birth, showed, from an objective standpoint, that she had a serious medical need and was exposed to an unnecessary risk of harm for the purposes of her § 1983 Eighth Amendment claim. The court held that summary judgment was precluded by material issues of fact as to whether officers were deliberately indifferent to the risks of harm to the inmate and her serious medical needs when they shackled her to a hospital bed. According to the court, the inmate showed that shackling inmates while they were in labor was clearly established as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, thereby barring the Department of Corrections' qualified immunity defense. (Washington State Corrections Center for Women)

U.S. District Court
DISCIPLINE
FOOD

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. District Court
MEDICAL CARE

Konitzer v. Frank, 711 F.Supp.2d 874 (E.D.Wis. 2010). A prisoner, a biological male suffering from Gender Identity Disorder (GID), brought an action against prison officials alleging violation of Eighth Amendment's prohibition against cruel and unusual punishment by denying him certain medical services related to his disorder. The district court granted summary judgment for the prison officials in part and denied in part. The court held that

the prisoner's Gender Identity Disorder (GID) was a "serious medical need," as required to establish the prisoner's § 1983 claim alleging that denial of his request for the opportunity to live as a female, as part of his treatment for GID, violated his Eighth Amendment rights. According to the court, although the prisoner had received some hormonal therapy to provide relief from GID symptoms, denial of the opportunity to live as a female allegedly caused the prisoner to be depressed, resulting in self-mutilation of his genitals and suicide attempts.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether triadic therapy for Gender Identity Disorder (GID), which consisted of hormone therapy, real-life experience living as the preferred gender, and sex reassignment surgery, was the appropriate treatment for the prisoner. The court also found that summary judgment was precluded by genuine issues of material fact regarding whether prison officials' denial of a request by the male prisoner to live as a female by, for example, wearing makeup and female undergarments and removing facial hair, constituted deliberate indifference to the prisoner's serious medical needs, and whether security concerns justified such denial. (Wisconsin Department of Corrections)

U.S. District Court
FAILURE TO PROTECT
LIGHTING
USE OF FORCE

Tafari v. McCarthy, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel. The court held that a state prison correctional officer's alleged throwing of urine and feces on the prisoner to wake him up, while certainly repulsive, was de minimis use of force, and was not sufficiently severe to be considered repugnant to the conscience of mankind, and thus the officer's conduct did not violate the Eighth Amendment. The court found that officers who were present in the prisoner's cell when another officer allegedly threw urine and feces on the prisoner lacked a reasonable opportunity to stop the alleged violation, given the brief and unexpected nature of the incident, and thus the officers present in the cell could not be held liable for failing to intervene. 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 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
USE OF FORCE

Thomas v. Bryant, 614 F.3d 1288 (11th Cir. 2010). Inmates incarcerated at the Florida State Prison (FSP) brought a § 1983 action against various officers and employees of the Florida Department of Corrections (DOC), alleging that the use of chemical agents on inmates with mental illness and other vulnerabilities violated the Eighth Amendment's prohibition on cruel and unusual punishment. The claims against individual correctional officers responsible for administering the agents were settled. After a five-day bench trial on the remaining claims against the DOC Secretary and the FSP warden for declaratory judgment and injunctive relief, the district court entered findings of fact and conclusions of law. The court ended final judgment and a final permanent injunction in the inmates' favor. The Secretary and warden appealed. The appeals court affirmed. The court found that in reaching its conclusion the district court did not clearly err in finding that an inmate was sprayed with chemical agents at times when he had no capacity to comply with officers' orders because of his mental illness, or in finding that those sprayings caused the inmate lasting psychological injuries. According to the court, the repeated non-spontaneous use of chemical agents on an inmate with a serious mental illness constituted an extreme deprivation sufficient to satisfy the objective prong of the test for an Eighth Amendment violation. The court noted that the inmate's well-documented history of mental illness and psychotic episodes rendered him unable to comply at the times he was sprayed, such that the policy was unnecessary and without penological justification in his specific case. The court found that the DOC's policy and practice of spraying inmates with chemical agents, as applied to an inmate who was fully secured in his seven-by-nine-foot steel cell, was not presenting a threat of immediate harm to himself or others, and was unable to understand and comply with officers' orders due to his mental illness, were extreme deprivations violating the broad and idealistic concepts of dignity, civilized standards, humanity and decency embodied in the Eighth Amendment.

The court held that the district court did not clearly err in finding that the record demonstrated that DOC officials acted with deliberate indifference to the severe risk of harm an inmate faced when officers repeatedly sprayed him with chemical agents for behaviors caused by his mental illness. The appeals court held that the district court did not abuse its discretion in concluding that injunctive relief was warranted and necessary, despite contentions that an inmate was currently incarcerated at a facility where he was not subject to DOC's chemical agents policy. The court noted that the permanent injunction against violations of the mentally ill inmate's Eighth Amendment rights from sprayings with chemical agents did not extend further than necessary to correct a constitutional violation and was not overly intrusive. According to the court, in addition to being closely tethered to the identified harm, the district court's permanent injunctive relief was narrowly drawn and plainly adhered to the requirements of Prison Litigation Reform Act (PLRA). (Florida State Prison)

U.S. District Court
MEDICAL CARE

Young v. Adams, 693 F.Supp.2d 635 (W.D.Tex. 2010). An inmate suffering from a gender identity disorder brought a pro se, in forma pauperis § 1983 suit against prison officials, claiming that they collectively denied him hormone treatment, in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The district court dismissed the action for failing to comply with time limitations. The court noted that, even if the

case had met the time limitations, medical staff at the correctional facility were not deliberately indifferent to the serious medical needs of an inmate, where the inmate did not meet the requirements to receive hormone treatment under the correctional facility's policy for treatment of gender disorder, which included a confirmed parole or discharge date of 180 days. The court noted the inmate was referred to a mental health unit for evaluation, and he was an intact male who was still manufacturing testosterone. (Alfred D. Hughes Unit, Texas Department of Criminal Justice, Institutional Division)

2011

U.S. District Court
CELLS
SEARCHES
USE OF FORCE

Bailey v. Hughes, 815 F.Supp.2d 1246 (M.D.Ala. 2011). A state prisoner brought an action against a county sheriff's department, a sheriff, corrections officers, and others, alleging unconstitutional deprivations of his rights while in custody in a county jail. The defendants moved to dismiss and for an award of attorney fees. The district court granted the motions. The district court held that: (1) neither the Fourteenth Amendment nor the Fourth Amendment's excessive force prohibition applied to the sentenced offender; (2) the sheriff and supervisory officials were entitled to qualified immunity; (3) allegations did not state an Eighth Amendment claim based on jail overcrowding; (4) the officers' alleged conduct in tasing the prisoner did not violate the Eighth Amendment; (5) allegations did not state a § 1983 claim for an unconstitutional strip search; (6) placement of the prisoner alone in closet-sized cell for eight hours after the alleged incident did not amount to unconstitutional confinement; and (7) the officers' alleged conduct in searching the prisoner's cell did not amount to retaliation for prisoner's prior lawsuit. The court noted that the prisoner admitted that he repeatedly refused the officers' verbal commands and fled his cell, he was repeatedly warned that he would be shocked if he did not comply with the officers' commands, and he was shocked by a taser only once before he fled his cell and then two to three times after he did so. (Houston County Jail, Alabama)

U.S. District Court
SEPARATION
SECURITY

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

U.S. District Court
TORTURE
FAILURE TO PROTECT
HARASSMENT

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
CLOTHING
DRUG TESTING
HARASSMENT
LIGHTING
MEDICAL CARE
SANITATION
SEPARATION

Holmes v. Fischer, 764 F.Supp.2d 523 (W.D.N.Y. 2011). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by subjecting him to non-random urinalysis drug testing, confining him in a special housing unit (SHU), and denying medical care. The defendants moved for a more definite statement, to strike the complaint, and to dismiss. The district court denied the motion. The inmate alleged that, while incarcerated in a special housing unit (SHU): (1) he was routinely cuffed from behind, aggravating left shoulder and leg conditions resulting from previous injuries, (2) he was subjected to continuous illumination in his cell, rendering it impossible to sleep; (3) officials interfered with the inmate grievance he attempted to file regarding constant SHU cell illumination; (4) he was denied dental floss; (5) he was denied, during winter months, proper boots, gloves, hat, and thermos; (6) he was exposed to feces thrown by mentally-ill inmates confined to SHU; (7) he was denied proper medical treatment and tests; and (8) he was subjected to urinalysis testing which so traumatized him as to cause physical harm. The court held that these allegations were sufficient to state claims under the Eighth Amendment for cruel and unusual punishment and deliberate indifference to necessary medical care. According to the court, the inmate's allegations that he was subjected to urinalysis based on reports from confidential informants whose credibility and reliability had not been confirmed, despite the complete absence of any history of drug use, and that two random urinalysis tests to which he was subjected were done to retaliate against him for filing inmate grievances regarding non-random urinalysis testing, were sufficient to state an unreasonable search claim under the Fourth Amendment. The court found that the inmate's allegation that, as a result of repeated non-random urinalysis drug testing to which he was subjected, he suffered physical harm, including insomnia, nausea,

headaches, burning eyes, aggravation of an old gunshot wound, inability to exercise, and appetite loss, was sufficient to state a cruel and unusual punishment claim under the Eighth Amendment. (Elmira Correctional Facility, and Southport Correctional Facility, New York)

U.S. District Court
CAPITAL PUNISHMENT

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
SANITATION
TOILETS

Rodriguez-Sanchez v. Acevedo-Vila, 763 F.Supp.2d 294 (D.Puerto Rico 2011). An inmate brought a § 1983 action against a prison warden and a director of corrections for alleged violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court held that the prison warden was liable for an Eighth Amendment violation but the inmate was not entitled to a judgment against the director of corrections. The court found that the inmate was entitled to \$1,000 per day for pain and suffering and to a punitive damages award of \$10,000 from the warden. According to the court, the warden was liable to the inmate for violating the inmate's Eighth Amendment right to be free from cruel and unusual punishment because the inhumane conditions to which the inmate was subjected in his cell included the lack of an adequate place to sit, no working toilet, shower runoff water channeled through the cell, and foul odors. The court held that these conditions were the result of design and not of accident or happenstance, and were known to the prison officials in charge and in control, including the warden. (Correctional Institution Annex 296, Guayama, Puerto Rico)

U.S. Appeals Court
CONDITIONS
SAFETY
WORK

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

U.S. District Court
MEDICAL CARE

Wesolowski v. Harvey, 784 F.Supp.2d 231 (W.D.N.Y. 2011). A former prisoner brought a pro se civil rights action against the Superintendent of, and a dentist at, a correctional facility, alleging that he was subjected to cruel and unusual punishment in violation of his Eighth Amendment rights, due to a lack of dental care. The defendants moved for summary judgment. The district court granted the motion and dismissed the case. The court held that the allegation that the prisoner was subjected to a delay of seven months between his first request for dental treatment and his first examination by a dentist failed to state a claim for deliberate indifference to his serious medical needs. The court found that the allegation that the prisoner was only offered painkillers, with the option of immediate extraction of the three affected teeth, or fillings, was insufficient to state a claim for inadequate medical care. According to the court, the allegation that the prisoner was deprived of adequate dental care was insufficient to state a claim against the facility superintendent where no underlying constitutional deprivation occurred that the superintendent ignored, was informed of, created, permitted, or toward which he could have been deliberately indifferent. The court noted that the prisoner's prior requests for treatment were made at a different institution, to different persons, who were not parties to his lawsuit. (Southport Correctional Facility, New York)

2012

U.S. District Court
EXERCISE
MEDICAL CARE

Anderson v. Colorado, 887 F.Supp.2d 1133 (D.Colo. 2012). A mentally ill inmate sued a state, its Department of Corrections (DOC), the DOC's director, and a warden, asserting claims for alleged violations of due process, the Eighth Amendment bar against cruel and unusual punishment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following a bench trial, the district court held that: (1) denying the inmate in administrative segregation any opportunity to be outdoors and to engage in some form of outdoor exercise for period of 12 years was a serious deprivation of a human need; (2) the defendants were deliberately indifferent to the inmate's mental and physical health; (3) the inmate failed to establish that he was denied a necessary and appropriate medication in violation of ADA and the Rehabilitation Act; (4) the defendants had to assign a department psychiatrist to reevaluate the inmate's current mental health treatment needs and take steps concluded to be appropriate in the psychiatrist's medical judgment; (5) the inmate failed to establish a violation of his rights under the Eighth Amendment, ADA, and the Rehabilitation Act due to the alleged denial of treatment provided by a multidisciplinary treatment team; (6) the inmate had a due process-protected liberty interest in progressing out of administrative segregation; and (7) the new stratified incentive system that was being implemented with respect to inmates in administrative segregation, if used fairly, was consistent with due process. (Colorado Department of Corrections, Colorado State Penitentiary)

U.S. District Court BEDDING MEDICAL CARE	<p><i>Bell v. Luna</i>, 856 F.Supp.2d 388 (D.Conn. 2012). A state inmate brought a § 1983 action against prison officials and a prison doctor, alleging that the defendants subjected him to unconstitutional conditions of confinement and showed deliberate indifference to his serious medical needs, in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the state prison doctor was not deliberately indifferent to the inmate's health in failing to take sufficient measures to treat the inmate's joint and back pain, or in failing to prescribe the inmate with an analgesic cream, as would violate the inmate's Eighth Amendment rights. The court found that forcing the inmate to go nearly seven months with a torn, partially unstuffed, unhygienic mattress was a condition of confinement sufficiently serious to implicate the Eighth Amendment. According to the court, the inmate's allegations that a unit manager "willfully, wantonly, and maliciously disregarded" the inmate's repeated requests for an adequate and hygienic mattress stated a claim under § 1983 against the manager for cruel and unusual punishment in violation of his Eighth Amendment rights. The court held that the unit manager was not entitled to qualified immunity from the inmate's § 1983 claim where the law of the Second Circuit would have put the manager on notice at the time of the alleged violation that failing to provide the inmate with an hygienic, working mattress for over half a year ran afoul of the Eighth Amendment. (MacDougall-Walker Correctional Institution, Connecticut)</p>
U.S. District Court CELLS FAILURE TO PROTECT INJURY	<p><i>Facey v. Dickhaut</i>, 892 F.Supp.2d 347 (D.Mass. 2012). A prisoner at a state correctional institution filed a pro se § 1983 action against the prison and officials alleging his Eighth Amendment right to be free from cruel and unusual punishment was violated when officials knowingly placed him in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the complaint stated a claim against the deputy superintendent and an assistant for violation of the Eighth Amendment, by alleging that officials were aware of the feud between two rival prison gangs, that the prisoner was a known member of one of the gangs, that despite this knowledge officials had assigned the prisoner to a section of the prison where a rival gang was housed, and as a result he was violently attacked and sustained permanent injuries. The court found that the official who had instituted the gang housing policy could not be held personally liable, since he did not implement the policy, nor was he deliberately indifferent in supervising or training those who did. According to the court, state prison officials who had placed the prisoner known to be a gang member in danger by assigning him to a housing unit where he was violently attacked by members of a rival gang, were not entitled to qualified immunity in the prisoner's § 1983 suit. The court noted that clearly established law provided that the Eighth Amendment was violated if officials disregarded a known, substantial risk to an inmate's health or safety, and the officials had disregarded this risk, as well as violated a prison policy, by placing rival gang members in same housing unit. (Souza Baranowski Correctional Center, Massachusetts)</p>
U.S. District Court LETHAL INJECTION	<p><i>In re Ohio Execution Protocol Litigation</i>, 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)</p>
U.S. Appeals Court DISCIPLINE SAFETY	<p><i>Jabbar v. Fischer</i>, 683 F.3d 54 (2nd Cir. 2012). A state prison inmate brought an action against prison officials alleging that his constitutional rights under the Eighth and Fourteenth Amendments were violated when he was transported on a bus without a seatbelt and was injured when thrown from his seat. The defendants moved to dismiss for failure to state a claim. The district court granted the motion and the inmate appealed. The appeals court affirmed. The court held that the failure of prison officials to provide inmates in transport with seatbelts does not, without more, violate the Eighth Amendment's prohibition against cruel and unusual punishment or the Due Process Clause of the Fourteenth Amendment. The court noted that a bus seatbelt for a prison inmate in transport is not a life necessity, the deprivation of which constitutes cruel and unusual punishment under the Eighth Amendment. According to the court, a correctional facility's use of vehicles without seatbelts to transport prison inmates, when based on legitimate penological concerns rather than an intent to punish, is reasonable under the Eighth Amendment. (Woodbourne Correctional Facility, Ulster Correctional Facility, New York)</p>
U.S. District Court FAILURE TO PROTECT	<p><i>Jackson v. Gandy</i>, 877 F.Supp.2d 159 (D.N.J. 2012). A state prisoner brought a § 1983 action against a department of corrections, corrections officers, and prison officials, alleging violations of his Eighth Amendment right against cruel and unusual punishment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that there was no evidence that prison officials were personally involved in a corrections officers' alleged assault on the state prisoner, as required to establish supervisory liability against the officials under § 1983, despite defense counsel's bare assertions of deliberate indifference and notice of assaultive history. The court ruled that summary judgment was precluded by genuine issues of material fact as to whether the force used by corrections officers to subdue the prisoner was excessive and in violation of Eighth Amendment, and whether a corrections officer participated in the alleged assault on the prisoner. The court held that the corrections officers were not entitled to qualified immunity where the prisoner's complaint alleged a violation of the constitutional right to be free from unnecessary and wanton infliction of pain, and the right was clearly established at the time of the officers' alleged misconduct. (N.J. Dept. of Corr., Bayside State Prison)</p>
U.S. District Court FAILURE TO PROTECT ISOLATION PRETRIAL DETAINEES	<p><i>Johnston v. Maha</i>, 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</p>

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. Supreme Court
MEDICAL CARE

Minnecci v. Pollard, 132 S.Ct. 617, (2012). A prisoner at a federal facility operated by a private company filed a pro se complaint against several employees of the facility, alleging the employees deprived him of adequate medical care, in violation of the Eighth Amendment's prohibition against cruel and unusual punishment, and caused him injury. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded, and, subsequently, amended its opinion. The U.S. Supreme court reversed, finding that the prisoner could not assert an Eighth Amendment *Bivens* claim for damages against private prison employees. (Wackenhut Correctional Corporation- Federal Correctional Institution at Taft, California)

U.S. District Court
SEPARATION
DISCIPLINE

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. District Court
LETHAL INJECTION
PRIVACY

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

U.S. Appeals Court
DISCIPLINE
FOOD

Prude v. Clarke, 675 F.3d 732 (7th Cir. 2012). An inmate brought a § 1983 action against a sheriff and jail personnel, alleging that he was subjected to cruel and unusual punishment in violation of the Eighth Amendment as a result of his exclusive diet of nutrilof, a bad-tasting food given to prisoners as a form of punishment. The parties moved for summary judgment. The district court granted summary judgment to the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officials were aware that the inmate was being sickened by his exclusive diet of nutrilof, yet did nothing about it. According to the court, deliberate withholding of nutritious food from a prison inmate, or substitution of a tainted or otherwise sickening food, with the effect of causing substantial weight loss, vomiting, stomach pains, and maybe an anal fissure, or other severe hardship, violates the 8th Amendment prohibition against cruel and unusual punishment. (Milwaukee Co. Jail, Wisconsin)

U.S. District Court
FAILURE TO PROTECT
LIGHTS
PRETRIAL DETAINEES
SAFETY

Solivan v. Dart, 897 F.Supp.2d 694 (N.D.Ill. 2012). A pretrial detainee brought a § 1983 action against a county, corrections officers, and a sheriff, alleging deliberate indifference to undue punishment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee's § 1983 complaint stated a claim against a correctional officer for deliberate indifference to a serious need in violation of the Fourteenth Amendment, where the complaint alleged facts that indicated that the officer left inmates visually and audibly unsupervised for hours, knowing that a substantial risk of harm was present. The complaint further alleged that there were no light bulbs in the detainee's cell, no intercoms or emergency call buttons in cells, and no overhead cameras on his tier of the jail. According to the court, the complaint stated that the harm the detainee suffered at the hands of other inmates was significant, including severe injuries to his right eye and bleeding from his ear, and the complaint alleged that the detainee was the only person of Hispanic origin housed in the maximum security tier, while a significant majority of other inmates were African American, and that these circumstances put the detainee in an identifiable group of prisoners who were singled out for attack. (Division One, Cook County Department of Corrections, Illinois)

U.S. Appeals Court
CONDITIONS
LIGHTING
RESTRAINTS
TEMPERATURE

Chappell v. Mandeville, 706 F.3d 1052 (9th Cir. 2013). A state prison inmate brought a § 1983 action against prison officials, alleging violations of the Eighth and Fourteenth Amendments. The defendants moved for summary judgment on the ground of qualified immunity and the district court granted summary judgment as to some, but not all, of the claims. The defendants appealed. The appeals court reversed. The appeals court held that: (1) it was not clearly established that subjecting the prison inmate to a contraband watch violated the Eighth Amendment prohibition against cruel and unusual punishment, and thus prison officials were entitled to qualified immunity on the Eighth Amendment claim; (2) the contraband watch was not such an extreme change in conditions of confinement as to trigger due-process protection; and (3) it was not clearly established whether a state-created liberty interest existed with regard to the contraband watch, and thus officials were entitled to qualified immunity on the claim that the inmate's right to due process was violated because he was not provided with an opportunity to be heard by the official who ordered contraband watch. The contraband watch conditions included 24-hour lighting, mattress deprivation, taping the inmate into two pairs of underwear and jumpsuits, placing him in a hot cell with no ventilation, chaining him to an iron bed, shackling him at the ankles and waist, and forcing him to eat "like a dog." (California State Prison, Sacramento)

U.S. District Court
CROWDING
MEDICAL CARE

Coleman v. Brown, 960 F.Supp.2d 1057 (E.D.Cal. 2013). California prisoners with serious mental disorders brought a class action against a Governor, alleging that due to prison overcrowding, they received inadequate mental health care, in violation of the Eighth Amendment prohibition of cruel and unusual punishment. Separately, California prisoners with serious medical conditions brought a class action asserting constitutional claims similar to those in the other action. In the case concerning mental health care, the district court found Eighth Amendment violations and appointed a special master to oversee the development and implementation of a remedial plan. In the case concerning medical care, the State stipulated to a remedial injunction, and, after the State failed to comply with that injunction, the district court appointed a receiver to oversee remedial efforts. A three judge district court panel consolidated the two cases and the panel entered a remedial order requiring the State to reduce its prison population to 137.5 percent of design capacity within two years. The Governor appealed. The United States Supreme Court affirmed the population reduction order. The district court subsequently denied the defendants' motion to vacate or modify the population reduction order, and directed the defendants to comply with the population reduction order. The defendants' moved to stay the order directing compliance pending appeal to the United States Supreme Court. The district court denied the motion, finding that: (1) the State was not likely to succeed on the merits of the prisoners' lawsuit challenging prison conditions; (2) the State would not be irreparably injured absent a stay; (3) issuance of a stay would substantially injure the prisoners; and (4) the public interest favored denying the stay. (California)

U.S. Appeals Court
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. Appeals Court
FAILURE TO PROTECT
FAILURE TO PROVIDE
CARE
MEDICAL CARE

Lemire v. California Dept. of Corrections and Rehabilitation, 726 F.3d 1062 (9th Cir. 2013). The estate, parents, and daughter of a mentally ill inmate who died in custody brought a § 1983 action against the California Department of Corrections and Rehabilitation (CDCR), CDCR officials, and prison staff. The plaintiffs sought to recover damages for alleged violations of the Eighth Amendment, based on the inmate's right to be free from cruel and unusual punishment, and the Fourteenth Amendment, based on the family's substantive due process right of familial association. The district court granted summary judgment to the plaintiffs. The appeals court affirmed in part, vacated in part, and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether: (1) withdrawal of all floor staff from a prison building which housed mentally ill inmates, for up to three and a half hours, created an objectively substantial risk of harm to the unsupervised inmates in the building; (2) the captain who called staff meetings, and a warden, who purportedly authorized the meetings, were aware of risks posed by withdrawing all floor officers from the building for over three hours; (3) any risk of harm could have been prevented with adequate supervision; and (4) the actions of the warden and the captain shocked the conscience.

The court also found genuine issues of material fact existed as to whether (1) floor officers who were the first prison personnel to arrive in the cell of the mentally ill inmate who apparently committed suicide were deliberately indifferent to the inmate's serious medical needs when they failed to provide cardiopulmonary resuscitation (CPR), despite being trained to administer it; (2) the officers' failure to provide medical care caused the inmate's death; and (3) the officers' actions shocked the conscience, precluding summary judgment as to the § 1983 Eighth Amendment medical claim brought by the inmate's family against officers and family's substantive due process claim against the officers. (California State Prison at Solano)

U.S. District Court
BEDDING
FOOD

Lewis v. Zon, 920 F.Supp.2d 379 (W.D.N.Y. 2013). A Jewish inmate brought an action against a state's department of corrections and approximately 50 of its officials and employees pursuant to § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging denial of religious accommodations in violation of the First Amendment and RLUIPA. The inmate moved for summary judgment and the defendants cross moved to dismiss and/or for summary judgment. The district court denied the plaintiff's motion, and granted

in part and denied in part the defendant's motion. The court held that: (1) there was no evidence that the prison's practice of inspecting the inmate's meals substantially burdened the prisoner's free exercise of his faith; (2) the prison's policy of inspecting the prisoners' meals for dangerous items was objectively reasonable; (3) the prison's offering of religious meal plans to inmates who demonstrated entitlement thereto preserved the inmates' free exercise freedoms; (4) the prison's failure to provide the inmate with food during Jewish holy day fast days was not cruel and unusual punishment; (5) there was no evidence that the defendants were deliberately indifferent to the inmate's medical needs during his hunger strike; (6) a material fact dispute regarding whether the inmate was denied medical treatment when he began experiencing pain after the culmination of his hunger strike precluded summary judgment on the claim for deliberate indifference to a serious medical need; and (7) the inmate's having to forego fresh bedding for a few hours after soiling his bedding was not a serious medical situation requiring treatment. (New York State Department of Correctional Services, Upstate Correctional Facility, Downstate Correctional Facility, Wende Correctional Facility, and Auburn Correctional Facility)

U.S. Appeals Court
LETHAL INJECTION

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
CONDITIONS
MEDICAL CARE
SMOKE-FREE
ENVIRONMENT

Mearin v. Swartz, 951 F.Supp.2d 776 (W.D.Pa. 2013). State inmates, proceeding pro se, brought an action against prison officials and employees, alleging that exposure to environmental tobacco smoke (ETS) violated the Eighth Amendment, as well as asserting First Amendment retaliation claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoners' allegations were sufficient to plead they were exposed to unreasonably high levels of environmental tobacco smoke (ETS), as required to state a § 1983 claim for violations of the Eighth Amendment against various prison officials and employees. One prisoner alleged that he was exposed to constant smoking by cellmates, inmates in neighboring cells, and by corrections officers and staff, which resulted in his suffering from constant coughs, headaches, chest pains, shortness of breath, vomiting, and fatigue. A second prisoner alleged that he was constantly exposed to second hand smoke by other inmates and employees while in certain housing, which resulted in his suffering from constant headaches, coughs, dizziness, breathing difficulties, and burning sensations in his chest. The prisoners alleged that officials and employees had actual knowledge of their exposure to ETS and of the risks of harm to the prisoners' health, but failed to rectify conditions and to enforce the prison's zero tolerance smoking policy. The court found that the prisoners' allegations that they had made requests to unit managers to be housed with non-smoking cellmates, that the managers had knowledge of the prisoners' need to be housed with non-smokers, that the managers denied the requests, that the prisoners suffered various health conditions from exposure to smoke, and that the prisoners submitted grievances about smoke exposure, were sufficient to state a § 1983 claim against case managers for violations of the Eighth Amendment. (State Correctional Institution at Greene, Pennsylvania)

U.S. District Court
CONDITIONS
FAILURE TO PROTECT
MEDICAL CARE

Pratt v. City of New York, 929 F.Supp.2d 314 (S.D.N.Y. 2013). A prisoner brought a § 1983 action against a city, its Commissioner of Corrections, and other prison officials, alleging cruel and unusual punishment in violation of Eighth Amendment based on the prison's failure to address and mitigate asbestos exposure in prison dormitories. The district court denied the defendants' motion to dismiss for failure to state a claim. The court held that the prisoner stated a § 1983 claim that the prison's failure to address and mitigate friable asbestos exposure constituted cruel and unusual punishment under the Eighth Amendment, by alleging that the prison dormitory was contaminated with asbestos and that prison maintenance deliberately avoided testing potentially contaminated pipes and older floor tiles for asbestos exposure. According to the court, exposure to friable asbestos poses a sufficiently serious risk to a prisoner's health as to constitute a serious deprivation, as an element of a claim of cruel and unusual punishment under the Eighth Amendment. The prisoner alleged that most of the facility pipes and the ceiling heating system were deteriorating due to roof leaks, and that leaking water captured small asbestos particles ("friable asbestos") from the deteriorated pipes and heating system and brought the friable asbestos into the dormitory. According to the prisoner, the friable asbestos is also blown throughout the dormitory by the ceiling heating system. The prisoner was a licensed asbestos remover. (Anna M. Koss Center, Rikers Island, New York City, New York)

U.S. Appeals Court
MEDICAL CARE

Ray v. Wexford Health Sources, Inc., 706 F.3d 864 (7th Cir. 2013). A state prison inmate brought a § 1983 action against a prison physician and physician's employer, alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment as a result of the physician's failure to treat the inmate's shoulder pain. The district court granted summary judgment to the defendants and the inmate appealed. The appeals court affirmed. The court held that the prison physician did not display deliberate indifference to the inmate's serious medical condition of shoulder pain, as required to support a § 1983 claim against the physician for cruel and unusual punishment in violation of the Eighth Amendment. The court noted that, although the inmate did not receive an MRI (magnetic resonance imaging) scan that he wanted because the physician diagnosed the inmate with arthritis and did not believe an MRI scan would help in treatment, the inmate received medical treatment for his shoulder pain, including frequent examinations, x-rays, and painkillers, and he was assigned to a lower bunk so he could avoid arm motions that he found painful. (Western Illinois Correctional Center)

U.S. Appeals Court
EXECUTION
DEATH PENALTY

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
MEDICAL CARE

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
ISOLATION

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. Appeals Court
BEDDING
CROWDING
NOISE
SAFETY
SANITATION
TEMPERATURE
VENTILATION

Walker v. Schult, 717 F.3d 119 (2nd Cir. 2013). An inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a warden and various other prison officials and employees, alleging violations of the Eighth Amendment. The district court granted the defendants' motion to dismiss. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that the prisoner's allegations were sufficient to plead that he was deprived of the minimal civilized measure of life's necessities and was subjected to unreasonable health and safety risks, as required to state a § 1983 claims against prison officials for violations of the Eighth Amendment. The prisoner alleged that: (1) for approximately 28 months he was confined in a cell with five other men with inadequate space and ventilation; (2) the heat was stifling in the summer and it was freezing in the winter; (3) urine and feces splattered the floor; (4) there were insufficient cleaning supplies; (5) the mattress was too narrow for him to lie on flat; and (6) noisy and crowded conditions made sleep difficult and created a constant risk of violence. The court also found that the prisoner's allegations were sufficient to plead that prison officials knew of and disregarded excessive risks to his health and safety, as required to find that the officials were deliberately indifferent. The prisoner alleged that officials knew of overcrowding in his cell, that he spoke with some officials about the conditions, that officials were aware noise was loud and constant, that they were aware of temperature issues, that the prisoner informed officials that his bed was too narrow, that one official failed to issue cleaning supplies, and that conditions did not change despite his complaints. (Federal Correctional Institution, Ray Brook, New York)

U.S. District Court
FAILURE TO PROTECT
HARASSMENT
PRIVACY

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)

2014

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE

Endl v. New Jersey, 5 F.Supp.3d 689 (D.N.J. 2014). The parents of an inmate who died in a state prison brought a § 1983 action, individually and the mother as administrator of the inmate's estate, against the state, the department of corrections (DOC), a prison, corrections officers, a medical care provider, and physicians and nurses, alleging the inmate had been deprived of necessary medical care. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The court held that corrections officers, who were sued in their official capacities, were not immune from liability under the New Jersey Tort Claims Act (TCA) where there were not just errors in medical judgment, but claims of deliberate or reckless indifference, and the survivors' clearly alleged conduct that may have been outside the scope of the officers' employment or that may have constituted willful misconduct. The court found that allegations that individual medical providers responsible for the inmate misdiagnosed the inmate's congestive heart failure as bronchitis, failed to provide a medical workup following the inmate's complaint of chest cavity pain, and failed to properly medicate him, were sufficient to support an Eighth Amendment claim for cruel and unusual punishment in the § 1983 action against the providers. (Northern State Prison, New Jersey)

U.S. Appeals Court
LIGHTING

Greening 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
LETHAL INJECTION

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
MEDICAL CARE

Martinson v. Leason, 22 F.Supp.3d 952 (D.Minn. 2014). A prisoner brought an action under § 1983 against three county jail nurses in their individual capacities alleging deliberate indifference to the prisoner's health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, as well as a negligence claim against the county, following amputation of nine fingers after an infection progressed to sepsis. The defendants moved for summary judgment. The district court granted the motion. The court held that: (1) the nurse who responded to a medication request was not reckless; (2) the nurse who knew the prisoner to be ill was not reckless; (3) failure to act reasonably in following a jail policy was not deliberate indifference; (4) a nurse was not aware of serious medical need; and (5) the prisoner's diarrhea and bloody cough was not a serious medical need. (Dakota County Jail, Minnesota)

U.S. District Court
FAILURE TO PROTECT
MEDICAL CARE

Mori v. Allegheny County, 51 F.Supp.3d 558 (W.D.Pa. 2014). An inmate who was seven and one-half months into a “high risk” pregnancy brought an action under § 1983 against a county for deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, and survival and wrongful death claims for violations of the Fourteenth Amendment, after the loss of the child following a placental abruption. The county moved to dismiss. The district court denied the motion. The court held that the prisoner: (1) stated an Eighth Amendment claim based on failure to monitor the unborn child after the prisoner complained of vaginal bleeding; (2) stated a claim against the county based on custom and practice; (3) sufficiently alleged a causal link between the policies and the loss of the child; (4) stated a claim against county officials for individual liability; and (5) stated wrongful death and survivor claims for the death of the child. The inmate alleged that individual policy makers, including the chief operating officer of the county jail’s health services, and the jail’s nursing supervisor, were responsible for the policies that led to failure to provide adequate medical treatment. The prisoner also alleged that she was made to wait over 24 hours before being sent to a hospital after her vaginal bleeding started, that she was transported by a police cruiser rather than ambulance, that it was well known that bleeding late in pregnancy often indicated serious medical issues, that the child was alive during birth, and that the delay in medical treatment contributed to the injuries during birth and the death of the child shortly after birth. (Allegheny County Jail, Pennsylvania)

U.S. District Court
INJURY
PLUMBING
TEMPERATURE

Morris v. Corrections Corporation of America, 75 F.Supp.3d 457 (D.D.C. 2014) A former District of Columbia inmate brought a state-court negligence action against a private prison operator, seeking damages for a scrotal burn injury he allegedly sustained when the water temperature in a prison shower spiked unexpectedly. The operator moved the action to federal court, and moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the operator had notice of allegedly dangerously high water temperatures in the prison showers, and the operator’s alleged breach of its duty to properly maintain the shower facilities was not the proximate cause of the scrotal burn. (Correctional Treatment Facility, operated by Corrections Corporation of America, Washington, D.C.)

2015

U.S. Appeals Court
TEMPERATURE

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
SEARCHES
FAILURE TO PROTECT

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
EXERCISE
CLOTHING
TEMPERATURE

Diaz v. Davidson, 799 F.3d 722 (7th Cir. 2015). A former state inmate filed an action alleging that prison officials’ denial of adequate exercise violated the Eighth Amendment’s prohibition against cruel and unusual punishment. The district court entered judgment in the officials’ favor and the inmate appealed. The appeals court affirmed. The court held that the officials’ failure to provide the inmate with a hat and gloves to wear when he exercised in his outdoor cell did not violate the Eighth Amendment. The court held that state prison officials’ failure to provide the inmate a with hat and gloves to wear when he exercised in his outdoor cell in a prison yard in very cold winter weather did not constitute cruel and unusual punishment, in violation of the Eighth Amendment, even though the inmate was unable to do the chin-ups he needed to prevent the muscles in his back from atrophying because of arthritis, and the indoor cell was not large enough. The court noted that guards gave him what they were required to give him according to the prison’s policy without realizing, or being irresponsible in failing to realize, that he needed gloves and a hat to do specific exercises. According to the court, the warden received only one pertinent grievance, which complained that on one occasion the inmate had been left outdoors without a hat and gloves for two hours. (Pontiac State Prison, Illinois)

U.S. District Court
LIGHTING

Grenning v. Stout, 144 F.Supp.3d 1241 (E.D. Wash. 2015). A state prisoner commenced a § 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
TEMPERATURE
VENTILATION
MEDICAL CARE

Hinojosa v. Livingston, 807 F.3d 657 (5th Cir. 2015). The mother of an inmate who died of complications from heatstroke while incarcerated brought an action against prison officials and employees, the Texas Department of Criminal Justice (TDCJ), the University of Texas Medical Branch (UTMB), and an official of UTMB, alleging that they were responsible for her son's death. Prison officials moved to dismiss on the basis of qualified immunity. The district court deferred ruling and the officials appealed. The appeals court dismissed the action, finding that it did not have jurisdiction over the appeal. The court held that the inmate's factual allegations, if true, would be sufficient to establish prison officials' liability for an Eighth Amendment violation and to overcome a qualified immunity defense, and that further clarification of the facts was necessary for the district court to rule on the prison officials' qualified immunity defense. The mother of the inmate alleged that officials subjected the inmate to dangerous heat conditions in conscious disregard of the serious risk that the heat posed for prisoners who, like the inmate, suffered from certain medical conditions, took certain medications, and had recently been transferred from air-conditioned jails to non-climate-controlled facilities. The mother alleged that the officials had promulgated and had power to change policies that allegedly caused the inmate's death, and the Eighth Amendment right not to be subjected to extremely dangerous temperatures without adequate ameliorative measures had been clearly established at the time of inmate's death. (Garza West Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
MEDICAL CARE

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. Appeals Court
EXERCISE
CELLS
DEATH PENALTY

Prieto v. Clarke, 780 F.3d 245 (4th Cir. 2015). A state prisoner convicted of capital murder and sentenced to death brought a pro se § 1983 action, alleging that his confinement on death row, pursuant to a state policy which required him to be in a single cell with minimal visitation and recreation opportunities, violated his procedural due process and Eighth Amendment rights. The district court dismissed the Eighth Amendment claim, and subsequently granted summary judgment in favor of the prisoner on the due process claim. Prison officials appealed. The appeals court reversed, finding that the prisoner had no due process liberty interest in avoiding confinement on death row. (Sussex I State Prison, Virginia)

U.S. District Court
SANITATION
CLOTHING
FOOD
USE OF FORCE
CONDITIONS

Smith v. Eovaldi, 112 F.Supp.3d 779 (S.D. Ill. 2015). A state inmate, proceeding in forma pauperis, brought a § 1983 action against several prison officers, alleging use of excessive force and exposure to inhumane conditions in his cell. The prisoner alleged that after he had a "negative outburst" and was "maced" by a lieutenant and removed from his cell by a corrections officer, he was taken to an infirmary bullpen, where he was forced to lie on the floor. While he was on the floor, the prisoner alleged that officers kicked and punched him for ten minutes, causing him to defecate upon himself. He alleged that after the incident, he was stripped of his prison clothes and "inadequately seen" by "medical" personnel. At the screening stage of the case, the district court dismissed the complaint in part against some defendants, but declined to dismiss with regard to the others. The court held that the inmate sufficiently alleged § 1983 claims against several prison officers for use of excessive force by alleging that the officers engaged in prolonged attacks against him and that one officer subsequently attacked him again.

The court allowed the prisoner's claims against several prison officers regarding conditions of his confinement to proceed. The prisoner alleged that two officers did not feed him for several days after the alleged attack against him, that two other officers did not allow the inmate to shower or otherwise clean off fecal matter for several months, and that two other officers denied him hygiene products and warm clothing during winter months. (Menard Correctional Center, Illinois)

2016

U.S. District Court
ISOLATION
MEDICAL CARE
EXERCISE
CONDITIONS

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 11: DISCIPLINE

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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.

1962

U.S. District Court
LENGTH OF
SEGREGATION

Fulwood v. Clemmer, 206 F.Supp. 370 (D. D.C. 1962). Isolation in solitary confinement for two years constitutes cruel and unusual punishment because the only violation of prison rules was relatively minor. (Dist. of Columbia Jail)

1969

U.S. Appeals Court
SEGREGATION
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 Prison, New York)

1971

U.S. District Court
ISOLATION

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 County Jail, Ohio)

U.S. Supreme Court
CONDITIONS OF
SEGREGATION
DISCIPLINARY
PROCEDURES

Wilwording v. Swenson, 404 U.S. 249 (1971) (Per Curiam). A state habeas corpus petition by inmates confined in maximum security at Missouri State Penitentiary challenging conditions and disciplinary measures, but not seeking release, is dismissed. The inmates then brought a federal habeas corpus action. While state habeas corpus proceedings were exhausted, the District Court for the Western District of Missouri dismissed the complaint on the grounds that 28 U.S.C. Section 2254 had not been satisfied as the inmates had not invoked any of a number of possible state remedies. The Eighth Circuit Court of Appeals affirmed and the inmates petitioned the Supreme Court for a writ of certiorari. (Reversed and Remanded.)

HELD: The exhaustion requirement of 28 U.S.C. Section 2254 is merely an accommodation of the federal system designed to give the state an initial opportunity to pass upon and correct alleged violations of its prisoners' federal rights; and regardless of the remedy involved, Missouri courts have not granted a single hearing on conditions of confinement in state prisons. 404 U.S. at 250.

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 Penitentiary, Missouri)

1972

U.S. District Court
RULES

Collins v. Schoonfield, 344 F.Supp. 257 (D. Md. 1972). Inmates may not be punished for conduct of innocuous or trivial nature under vague and uncertain standards and regulations because such conduct may offend the sensibilities of individual corrections

officers where such conduct poses no threat to the security and order of the institution. "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. Supreme Court
SOLITARY
CONFINEMENT

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
DUE PROCESS
SEGREGATION

Haines v. Kerner, 404 U.S. 519 (1972) (Per Curiam), reh'g. 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. District Court
SEGREGATION
LENGTH OF
SEGREGATION
DUE PROCESS

Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). The use of substandard facilities for punitive segregation, and the practice of placing inmates in segregation cells without clothing are unconstitutional. Court ordered that solitary cells be provided with a bunk, water closet, drinking fountain and lavatory, and be of not less than forty square feet in dimension. An inmate who is confined in a solitary cell for more than three days shall have a hearing, before an impartial board, and no inmate shall be confined in solitary for over fifteen days. (Dallas County Jail, Texas)

1973

U.S. District Court
LENGTH OF
SEGREGATION
CONDITION OF
SEGREGATION

Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Inmates in isolation shall be permitted to exercise outside their cells daily. 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. District Court
CORPORAL
PUNISHMENT

Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Corporal punishment of any federal prisoner is prohibited. No federal prisoner may be placed in a segregation cell unless the rule or regulation allegedly violated has been clearly communicated in advance. (St. Louis County Jail, Missouri)

U.S. District Court
LENGTH OF
SEGREGATION
CONDITION OF
SEGREGATION

Osborn v. Mason, 359 F.Supp. 1107 (D. Conn. 1973). Both length and conditions of confinement must be considered in eighth amendment analysis of conditions in punitive segregation. (New Haven Correctional Center, Connecticut)

U.S. Supreme Court
GOOD-TIME

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)

1974

U.S. District Court
ACCESS TO COURTS
CORRESPONDENCE
RECORDS
CLOTHING

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.

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.

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
READING MATERIAL

Johnson v. Anderson, 370 F.Supp. 1373 (D. Del. 1974). Cutting off access to reading material while under disciplinary sentence serves a legitimate state interest in the discipline of an inmate. (Delaware Correctional Center, Smyrna, Delaware)

U.S. District Court

Rhem v. Malcolm, 371 F.Supp. 594 (S.D. N.Y. 1974). The sole aim of jail discipline is preserving order; no considerations of rehabilitation exist. (Manhattan House of Detention, New York)

U.S. Supreme Court
DUE PROCESS

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.

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 marshal 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 reception 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. District Court
DUE PROCESS
CONDITION OF
SEGREGATION

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
RECORDS

Fitzgerald v. Procunier, 393 F.Supp. 335 (N.D. Calif. 1975). Written record with explanation is ordered for disciplinary decision. Right to counsel for disciplinary proceedings is limited. (San Quentin State Prison, California)

U.S. Appeals Court
CONDITION OF
SEGREGATION

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
VISITS

Rhem v. Malcolm, 396 F.Supp. 1195 (S.D. N.Y. 1975), aff'd, 527 F.2d 1041 (2nd Cir. 1975). No detainee in a segregation unit can be denied a visit solely on the grounds of his presence there. (Manhattan House of Detention, New York)

1976

U.S. Supreme Court
DUE PROCESS
EQUAL PROTECTION

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.

HELD: "[P]ermitting an adverse inference to be drawn from an inmate's silence at his disciplinary proceedings is not, on its face, an invalid practice...." 425 U.S. at 320.

HELD: Mandatory confrontation and cross examination, except where prison officials can justify their denial on one or more grounds that appeal to judges, effectively pre-empts the area that Wolff left to the sound discretion of prison officials." 425 U.S. at 322.

HELD: In reversing the Ninth Circuit Court of Appeals' ruling that minimum due process--such as notice, opportunity for response, and statement of reasons for action by prison officials--was necessary where inmates were deprived of privileges, the court found the disciplinary proceedings involved here to concern allegations of serious misconduct; thus, the Wolff standards apply. Without a fact pattern involving loss of privileges: "we are unable to consider the degree of 'liberty' at stake in loss of privileges and thus whether some sort of procedural safeguards are due when lesser penalties are at stake." 425 U.S. at 323.

NOTE: "Due to the peculiar environment of the prison setting, it may be that certain facts relevant to the disciplinary determination do not come to light until after the formal hearing. It would be unduly restrictive to require that such facts be excluded from consideration; in as much as they may provide valuable information with respect to the incident on questioning and may arrest prison officials in tailoring penalties to enhance correctional goals. In so stating, however, we in no way diminish our holding in Wolff that 'there must be a written statement by the factfinders as to the evidence relied on and reasons for the disciplinary action.'" [Cite omitted]. 425 U.S. at 322-323 N.5.

GENERAL NOTES: Baxter and Wolff, involving three prison systems (West Coast, Midwest, and East Coast) appear to present the definitive U.S. Supreme Court position on prison disciplinary procedures. It is clear that the standards of Baxter and Wolff apply to instances of serious misconduct. While no extensive definition of serious misconduct was offered by the Court, from the two decisions loss of good time and punitive segregation appear to "loss of privileges" situations. (Rhode Island and California prisons)

U.S. District Court
REVIEW OF
SEGREGATION

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)

1977

U.S. District Court
GROUPS

Goldsby v. Carnes, 429 F.Supp. 370 (W.D. Mo. 1977). There shall be no discipline of a group of inmates unless all of them participated in the wrongful act. (Jackson County Jail, Kansas City, Missouri)

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 prisoner's misbehavior. (Illinois State Prison)

U.S. District Court
CONDITION OF
SEGREGATION
DUE PROCESS

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

U.S. Supreme Court
LENGTH OF
SEGREGATION

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.)

HELD: "[W]e find no error in the inclusion of a thirty day limitation on sentences to punitive isolation as a part of the district court's comprehensive remedy." 437 U.S. at 688.

NOTE: This holding was unquestionably based on the particular facts presented by this case, and it would be error to interpret this as the U.S. Supreme Court's position on length of punitive isolation. (Arkansas Prison System)

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, Connecticut)

U.S. District Court
RESTRAINTS

Owens-El v. Robinson, 442 F.Supp. 1368 (W.D. Penn. 1978). Use of restraints as a disciplinary measure violates the eighth amendment. (Allegheny County Jail, Pittsburgh, Pennsylvania)

1979

U.S. Supreme Court
PRETRIAL
DETAINEES
PUNISHMENT

Bell v. Wolfish, 441 U.S. 520 (1979). Pretrial detainees confined in the Metropolitan Correction Center (MCC) in New York City challenged virtually every facet of the institution's conditions and practices in a writ of habeas corpus, alleging such conditions and practices violate their constitutional rights. MCC is a federally operated, short-term detention facility constructed in 1975; Eighty-five percent of all inmates are released within sixty days of admission. MCC was intended to include the most advanced and innovative features of modern design in detention facilities. The key design element of the facility is the "modular" or "unit" concept, whereby each floor housing inmates has one or two self-contained residential units, as opposed to the traditional cellblock jail construction. Within four months of the opening of the twelve-story, 450 inmate capacity facility, this action was initiated. The U.S. District Court for the Southern District of N.Y. enjoined no less than twenty practices at the MCC on constitutional and statutory grounds, many of which were not appealed. See, United States Ex Rel Wolfish v. Levi, 439 F.Supp. 114 (S.D.N.Y.). The Second Circuit Court of Appeals affirmed the district court decision, See, Wolfish v. Levi, 573 F.2d 118 (2d Cir. 1978), and reasserted the "compelling-necessity" test as the standard for determining limitations on a detainee's freedom.

The U.S. Supreme Court granted certiorari "to consider the important constitutional questions raised by [recent prison decisions] and to resolve an apparent conflict among the circuits." 441 U.S. at 524: Do the publisher-only rule, the prohibition on receiving packages from outside sources, the search of living quarters, and the visual inspection of body cavities after contact visits constitute punishment in violation of the rights of pretrial detainees under the due process clause of the fifth amendment?

HELD: "Nor do we think that the four MCC security restrictions and practices...constitute 'punishment' in violation of the rights of pretrial detainees under the due process clause of the fifth amendment." 441 U.S. at 560, 561.

REASONING: a. [T]he determination whether these restrictions and practices constitute punishment in the constitutional sense depends on whether they are rationally related to a legitimate nonpunitive governmental purpose and whether they appear excessive in relation to that purpose. 441 U.S. at 561.

b. Ensuring security and order at the institution is a permissible nonpunitive objective, whether the facility houses pretrial detainees, convicted inmates, or both...[W]e think that these particular restrictions and practices were reasonable responses by MCC officials to legitimate security concerns. [Detainees] simply have not met their heavy burden of showing that these officials have exaggerated their response to the genuine security considerations that activated these restrictions and practices. CLOSING

COMMENTS OF MAJORITY OPINION: "[T]he inquiry of federal courts into prison management must be limited to the issue of whether a particular system violates any prohibition of the constitution, or in the case of a federal prison, a statute. The wide range of 'judgment calls' that meet constitutional and statutory requirements are confided to officials outside of the judicial branch of government." 441 U.S. at 562.

GENERAL NOTES: The Court saw this case, a challenge to virtually every aspect of the operation of a state of the art detention facility, as an opportunity to clarify the

judiciary's role in the operation of prisons. The five-four decision indicates there was no general consensus as to what that role is, or how it should be applied. No less than three possible standards of review are contained in the majority and dissenting opinions: 1) A "rational basis", subjective test; 2) A balancing of interests test; 3) An objective standard of review. (Metropolitan Correction Center (MCC), New York)

U.S. District Court

Hanvey v. Blakenship, 474 F.Supp. 1349 (W.D. Vir. 1979), aff'd, 631 F.2d 296 (4th Cir. 1980). Where the authorities found cash, and the prisoner was disciplined for the unauthorized possession, the state could place the funds in the prisoner benefit fund and was under no obligation to hold the money for the prisoner and return it upon his release. (Bland Correctional Center, Virginia)

1980

U.S. District Court
DUE PROCESS

Brown v. Hilton, 492 F.Supp. 771 (D. N.J. 1980). The amendment of a disciplinary charge by the hearing officer does not violate due process where the inmate is offered a continuance to prepare a defense. (New Jersey State Prison, Trenton)

U.S. District Court
DUE PROCESS
PLACEMENT IN
SEGREGATION

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

U.S. District Court
LENGTH OF
SEGREGATION

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

Gibson v. McEvers, 631 F.2d 95 (7th Cir. 1980). Where the penalty imposed was slight, such as the denial of movie privileges, refusal to call witnesses at the disciplinary hearing did not violate due process. (Logan Correctional Center, Illinois)

U.S. District Court
DUE PROCESS

Green v. Ferrell, 500 F.Supp. 870 (S.D. Miss. 1980), rev'd, 664 F.2d 1292. A Mississippi District Court Judge had dismissed a suit brought by inmates of the Adams County, Mississippi Jail; on appeal the higher court ordered the case to continue. The inmates challenged conditions at the jail, which was built in 1978 at a cost of \$2,000,000. Among the inmate's complaints were cold food, inadequate medical care, improper mail regulations and unsatisfactory classification procedures. In addition, one inmate alleged that he received constitutionally inadequate medical care and offered a sworn affidavit from a physician in support of his claim. Regarding the general claims brought by the inmates, the court ruled in favor of the jail administration on every item. The court also found that the disciplinary procedure complied with due process. There is no constitutional right for jail inmates who only lose privileges to have any disciplinary system whatsoever. (Adams County Jail, Mississippi)

U.S. District Court
CONDITIONS OF
SEGREGATION

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). An allegation that inmates in the Special Housing Unit are limited to one visit with a counselor per week fails to state a claim upon which relief can be granted. Allegations that mail directed from the inmates to the superintendent of the institution is lost or destroyed state a claim upon which relief can be granted. Allegations regarding the lack of access to the regular visiting room and to the visiting room vending machines for visitors to inmates in the Special Housing Unit fail to state a claim upon which relief can be granted. Allegations of limiting the number of personal books in the Special Housing Unit to five, or a poorly shelved library and an almost total lack of non-English books do not state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

U.S. Supreme Court
DUE PROCESS

Hughes v. Rowe, 449 U.S. 5 (1980). The petitioner, a state prisoner, 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.

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. Appeals Court
GOOD-TIME
DUE PROCESS

Kennan v. Bennett, 613 F.2d 127 (5th Cir. 1980). The taking of good-time or the removal from a position where good-time can be earned requires procedural due process. An attack on such taking or removal is an attack on the length and duration of confinement so that available state remedies must be exhausted. (Kilby Correctional Facility, Alabama)

U.S. District Court
DUE PROCESS
GOOD-TIME

McGhee v. Belisle, 501 F.Supp. 189 (E.D. La. 1980). Due process does not apply in the taking of good time where the state has left the awarding of good time totally within the discretion of the administering officials. The statute creating good time does not create a protected liberty interest, and there are no regulations in existence creating such an interest. (Orleans Parish Prison, Louisiana)

U.S. District Court
HEARING IMPAIRED

Pyles v. Kamka, 491 F.Supp. 204 (1980). [A qualified sign language interpreter is to be provided upon request, or if it otherwise appears necessary, to]: (1) any hearing impaired inmate in any Adjustment Team hearing or in any disciplinary matter; (2) to any hearing impaired inmate in the provision of any medical, psychological or psychiatric care; (3) to any hearing impaired inmate in the provision of any counseling, or in any on-the-job training program, vocational training program or educational program. (House of Corrections, Maryland)

U.S. Appeals Court
DUE PROCESS

Stringer v. Rowe, 616 F.2d 993 (7th Cir. 1980). State regulations establishing procedures are to be employed before the administration of discipline creates a protected liberty interest requiring procedural due process. (Stateville Correctional Center, Illinois)

U.S. District Court
DUE PROCESS
LENGTH OF
SEGREGATION

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. Appeals Court
DUE PROCESS
CONDITION OF
SEGREGATION

Chavis v. Rowe, 643 F.2d 1281 (7th Cir. 1981). Reversing a dismissal granted by a federal district court, the United States Court of Appeals for the Seventh Circuit held that the failure of a disciplinary review board to provide an inmate with exculpatory evidence relating to the charges against him amounted to an actionable violation of his right to due process. The court also ruled that the inmate's allegations of the conditions to which he was exposed during six months in segregation raised a valid claim of cruel and unusual punishment.

The U.S. Court of Appeals of the Seventh Circuit held that failure to provide the inmate with the polygraph results tending to exonerate him was an actionable violation of his constitutional right to due process. The court also noted that failure of the disciplinary committee to inform the inmate in writing of its reasons for finding him guilty amounted to a separate, actionable violation of his due process rights.

Finally, the court stated that the inmate's eighth amendment claims of cruel and unusual punishment arising from his confinement in segregation should not have been dismissed, even though he did not specifically allege bad faith in his complaint. The inmate made the following allegations, which if proven would amount to cruel and unusual punishment: confinement in a 5x7 foot cell with four other residents; inadequate bedding, light, toilet facilities, and showers; insufficient access to legal materials, medical and dental care and food.

The court thus reversed the district court's order of dismissal and reinstated the case. (Statesville Correctional Center, Joliet, Illinois)

U.S. District Court
DUE PROCESS

Dowdy v. Johnson, 510 F.Supp. 836 (E.D. Vir. 1981). Failure of the Department of Corrections to comply with its own guideline for the time in which to conduct a disciplinary hearing does not, per se, violate due process. Here there was no showing of prejudice from the delay and, consequently, no violation of due process. (Powhatan Correctional Center, Virginia)

State Appeals Court
RECORDS
INFORMANTS

Gross v. Henderson, 435 N.Y.S.2d 823 (App. Div. 1981). An inmate subjected to a disciplinary hearing may be denied pre and/or post hearing access to a witness' statement where disclosure could jeopardize that witness' safety. The requirement for a statement which sets forth evidence relied on and reasons for the disciplinary measures imposed was adequately met where the statement specified that the evidence was "affidavits and interviews," the general contents of which had been provided to the petitioner on the record by the hearing officer. (Auburn Correctional Facility, New York)

U.S. District Court
DISCIPLINARY
PROCEDURES

Jacobson v. Coughlin, 523 F.Supp. 1247 (N.D. N.Y. 1981), cert. denied, 103 S.Ct. 77 (1981) aff'd, 688 F.2d 815 (2nd Cir. 1982). Disciplinary proceeding is found inadequate. Relying on the Second Circuit's decision in Powell v. Ward, the Federal District Court found that an individual in this instance must be given a statement of the reasons why calling the particular witnesses would constitute a threat to institutional security. The plaintiff inmate claimed that he was denied the effective assistance of counsel, under the provisions of state regulations, when the employee designated to assist him with his defense in a disciplinary hearing did not personally interview witnesses interviewed by the other side and did not inform the inmate of the results of any interviews conducted on his behalf. The court found that the inmate stated a substantial claim. The plaintiff was told of his right to request witnesses and to call witnesses, but the disciplinary committee failed to call any witnesses on his behalf. (Clinton Correctional Facility, New York)

U.S. Appeals Court
IMMUNITY

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

U.S. Appeals Court
PRETRIAL
DETAINEES

Jones v. Diamond, 636 F.2d 1364 (5th Cir. 1981). Prisoners being held in 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 prisoners appealed. On rehearing, 594 F.2d 997, the court of appeals held that due process clause accords pretrial detainees rights not enjoyed by convicted inmates: while a sentenced inmate may be punished in any fashion not cruel and unusual, the due process clause forbids punishment of a person held in custody awaiting trial but not yet adjudged guilty of any crime. (Jackson County Jail, Pascagoula, Mississippi)

U.S. Appeals Court
CONDITION OF
SEGREGATION

Littlefield v. Deland, 641 F.2d 729 (10th Cir. 1981). Confining a nonviolent mentally ill pretrial detainee in a strip cell without clothing, items of personal hygiene, bed or bedding and without out-of-cell recreation for nearly fifty-six days is punishment and thus violates due process. The intent to punish and the knowledge of conditions are implied from the facts. (Salt Lake County Jail, Utah)

U.S. Appeals Court
CONDITION OF
SEGREGATION

Maxwell v. Mason, 668 F.2d 361 (1981). The confinement of a state prisoner in solitary confinement with no clothing other than a pair of undershorts and no bedding other than a mattress as punitive measure violates the eighth amendment. Clothing is a basic necessity of human existence which cannot be deprived in the same manner as a privilege an inmate may enjoy. Any deprivation of basic necessities takes on added importance where it occurs in a condition of solitary confinement. The reason for that resides not solely in the requisites of proper hygiene, but also in the eighth amendment's basic concept supporting the dignity of man. (Nebraska State Penitentiary)

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)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
EXPUNGEMENT

Powell v. Ward, 643 F.2d 924 (2d Cir. 1981), cert. denied, 102 S.Ct. 131 (1980). Plaintiffs, inmates at New York's Bedford Hills Correctional Facility, moved for an order holding the superintendent of the facility in contempt of a 1975 order governing disciplinary proceedings against inmates. The United States District Court for the Southern District of New York entered permanent injunction with respect to procedures to be followed in inmate disciplinary proceedings, held the superintendent in civil contempt of preliminary injunction entered in 1975, ordered expungement of certain records, and appointed a special master. Appeal and cross appeal were taken.

The court of appeals held that: (1) every provision relied on by the district judge to support the contempt ruling was clear and unambiguous; (2) evidence of defendants' noncompliance with a 1975 order was clear and convincing; (3) evidence was more than adequate to support the finding that the superintendent was not reasonably diligent in attempting to insure compliance with a 1975 order; (4) ruling that the superintendent was in civil contempt of a 1975 order was entirely appropriate; (5) class member's attempt to have records of certain proceeding expunged was barred by res judicata; (6) expansion of expungement order was appropriate; and (7) award of nominal damages was not clearly erroneous. Contempt power may properly be exercised only if the order is clear and unambiguous, the proof of noncompliance is clear and convincing, and the defendant has not been reasonably diligent and energetic in attempting to accomplish what was ordered. (New York's Bedford Hills Correctional Facility)

U.S. Appeals Court
PRETRIAL
DETAINEES
DUE PROCESS

Villanueva v. George, 659 F.2d 851 (1981). A majority of the U.S. Court of Appeals for the Eighth Circuit, sitting en banc, ruled that the allegations of a pretrial detainee raised a legitimate factual issue as to the constitutionality of the conditions to which he was subjected during his pretrial confinement. The court found, therefore, that the trial judge should have presented the case to the jury rather than directed the verdict against the plaintiff. The circuit court found that the jury might have concluded that the conditions of confinement were punitive in nature. Since the due process clause prohibits the punishment of persons prior to a judgment of conviction, plaintiff Robert Villanueva would have to persuade the jury that punitive conditions existed during his pretrial detention. According to the decision:

The question of whether there is sufficient evidence of the defendants' punitive intent is one for the jury. Moreover, the jury may 'infer that the purpose was punishment from the fact that the condition either bore no reasonable relation to a legitimate goal or exceeded what was necessary for attaining such a goal...' Putnam v. Gerloff, 639 F.2d 415 at 420 (8th Cir. 1981). See also Bell v. Wolfish, 441 U.S. at 539. There is evidence in this record from which the jury could have reasonably concluded that Villanueva's conditions of confinement were unnecessarily excessive and bore no reasonable relation to a legitimate governmental interest... We emphasize that our decision is not based solely on the fact that Villanueva was confined in a cell measuring six feet by six feet, see Rhodes v. Chapman, 29 CrL 3061 (1981). It is rather based upon the totality of the circumstances, including cell size, time spent in the cell, lack of opportunity for exercise or recreation, general sanitary conditions, and the fact that the appellant's past behavior demonstrated an ability to be confined under less restrictive conditions without incident.

In dicta the court suggests that the classification procedure which resulted in the plaintiff's being placed in segregation while awaiting trial was valid. The procedure took into account the nature of the crime charged and particularly whether the crime was violent or aggressive, the prisoner's desire to remain in a particular classification, the psychological state of the individual and other similar factors. (St. Louis County Adult Correctional Facility, Missouri)

U.S. Appeals Court
DUE PROCESS

Ward v. Johnson, 690 F.2d 1098 (1981). In determining the procedural due process a prisoner is entitled to in a disciplinary hearing, the test is the severity of the potential punishment, not the actual punishment. The fact that a prisoner only suffered a loss of recreational privileges did not mean that the prisoner was less entitled to due process safeguards. The prisoner had been exposed to a maximum penalty of loss of some good time and a limited period in solitary confinement. The prisoner was improperly denied his right to call witnesses. However, he was entitled to recover no more than nominal damages. (Virginia Prison System)

State Appeals Court
RECORDS

Washington v. State, 405 So.2d 62 (Ct. Crim. App. Ala. 1981). Record of evidence used as basis for a decision is required. Two inmates filed a petition for habeas corpus challenging a disciplinary board's elimination of two years of accrued good time. The circuit court denied relief, and the inmates appealed. The appeals court reversed the lower court decision because a written statement from the fact-finders was not provided describing the evidence which justified the disciplinary action. (Alabama Prison System)

1982

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Bartholomew v. Watson, 665 F.2d 915 (9th Cir. 1982). Ninth circuit court of appeals has held that Oregon Correctional Division procedures which precluded inmates from calling other inmates or staff members as witnesses before a disciplinary committee violated due process. Eight inmates in the Oregon Correctional Division brought a class action suit under 42 U.S.C. Section 1983, requesting injunctive and declaratory relief to segregated quarters for disciplinary purposes. The suit also challenged the constitutionality of regulations limiting the prisoners' rights to call finding in favor of the inmates. The state appealed.

The appeals court noted that the defendants based their arguments on Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2963 (1974), which stated: "The 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."

The court concluded that the Corrections Division regulation denied inmates the right to present material testimony without proof of any facts establishing a threat to institutional safety, and that the blanket prohibition against calling of certain types of witnesses was an overreaction which violated due process. As such, the court affirmed the lower court in finding the rules unconstitutional. (Oregon Correctional Division)

U.S. District Court
DUE PROCESS

Harris v. MacDonald, 532 F.Supp. 36 (N.D. Ill. 1982). A prison disciplinary proceeding involving assignment to segregation and loss of statutory good-time credit implicates the deprivation of "liberty" in fourteenth amendment terms. Accordingly, the prisoner is constitutionally guaranteed certain procedural protections, including advance written notice of the charges and a written statement of the factfinders as to the evidence relied upon and the reasons for the disciplinary action. However, not every violation of administrative procedure in connection with major discipline automatically equates with a due process violation. (Stateville Correctional Center, Illinois)

State Supreme Court
DUE PROCESS

People ex rel. Martin v. Smith, 457 N.Y.S.2d 390 (Sup. Ct. 1982). Inmate must be advised of the evidence against him, and allowed to comment on the evidence. Following the commencement of a habeas corpus proceeding to obtain release from the special housing unit at a correctional facility, the Supreme Court held that the inmate's procedural rights were violated when: his requested witnesses were interviewed outside his presence; the hearing officer failed to mention any testimony supporting the charge; and the Department of Correctional Services failed to complete a due process hearing within seven days of imposing special confinement following the decision. (Attica Correctional Facility, New York)

State Appeals Court
DUE PROCESS
LANGUAGE

Santana v. Coughlin, 457 N.Y.S.2d 944 (App. Div. 1982). Spanish inmate's due process rights are violated because an accurate translation was not provided, and he was not informed of his right to call witnesses. As a result of a disciplinary hearing, 120 days confinement in the special housing unit, 120 days loss of commissary rights and six months loss of good time allowance was imposed on the plaintiff inmate. The appeals court held that the disciplinary hearing was invalid because the prisoner's native language was Spanish, and he understood no more than simple English; the interpreter at the disciplinary hearing had not repeated the exact questions asked nor the exact responses given, resulting in an inaccurate translation. This tainted the entire hearing. The inmate's rights to due process were further violated when he was not informed of his right to call witnesses. (Coxsackie Correctional Facility, New York)

State Appeals Court
PROSECUTION
DOUBLE JEOPARDY

State v. Killebrew, 327 N.W.2d 155 (Ct. App. Wis. 1982). Prosecution for offense and processing in the facility disciplinary system is allowed. On appeal, the court reversed a lower court ruling dismissing a criminal complaint charging the plaintiff inmate with escape from a correctional camp. The lower court dismissed the charge because the inmate had been subjected to prison discipline, having been assigned thirty-five days in "program segregation" for violating the prison rule against escape. The appeals court ruled that double jeopardy was not violated with the criminal charge and reversed. (State Prison, Waupun, Wisconsin)

U.S. District Court
CONDITIONS OF
SEGREGATION
DUE PROCESS

Strachan v. Ashe, 548 F.Supp. 1193 (D. Mass. 1982). Isolation unit conditions are held unconstitutional. Alleging that conditions of an isolation unit in a county correctional facility in Massachusetts were unconstitutional, the plaintiff brought this Section 1983 action. Although the plaintiff contended that the procedural aspects of the disciplinary proceedings which placed him in isolation, as well as the conditions of isolation were unconstitutional, the court focused on the conditions of the isolation cell. The cell was ten feet by ten feet with no toilet or running water. The plaintiff was permitted to leave his cell only fifteen minutes daily to exercise and to wash with cold water. His only bedding was a mattress on the floor. He was allowed only one blanket, a sheet and pillow. Food served to him was cold.

In discussing the lack of plumbing facilities, the court found that conditions of the isolation cell violated minimum state standards, which did not establish a constitutional violation per se, but lack of adequate plumbing facilities has previously been held to a violation of the eighth amendment. The court held that because the defendant supervisors had actual notice of the prison conditions, the administrative negligence of not acting on those conditions rose to the level of deliberate indifference in this case. The defendants argued that they were entitled to "good faith immunity," that they could not have been expected to know that they were violating the constitutional rights of the plaintiff. The court rejected this argument, finding that the inmate clearly had a constitutional right to adequate and hygienic means of disposing of his bodily waste. (Hampden County House of Corrections, Massachusetts)

State Appeals Court
DUE PROCESS

Tolden v. Coughlin, 457 N.Y.S.2d 942 (App. Div. N.Y. 1982). Inmate must be informed of right to call witnesses. On appeal, the Supreme Court, Appellate Division found the inmate's disciplinary hearing was constitutionally defective because the record failed to establish that the inmate was advised of his right to call witnesses at the hearing. The lower court decision was reversed. (Coxsackie Correctional Facility)

1983

State Supreme Court
COUNSEL

Arment v. Henry, 658 P.2d 663 (Washington Supreme Court, 1983). Indigent inmates are not entitled to appointment of counsel for prison disciplinary hearings. Inmates at the Washington State Corrections Center filed suit claiming that their constitutional right to due process had been violated when officials at the facility refused to appoint legal counsel for indigent inmates in disciplinary hearings. The plaintiffs were informed that they were to appear before the Board of Prison Terms and Paroles for disciplinary hearings. (Washington State Corrections Center)

U.S. Appeals Court
RECORDS
DUE PROCESS
INFORMANTS

Dawson v. Smith, 719 F.2d 896 (7th Cir. 1983), cert. denied, 104 S.Ct. 1714 (1983). Inmate does not have a right to read confidential informant's report. The U.S. Court of Appeals for the Seventh Circuit found no violation of an inmate's due process rights when he was denied access to a report by a confidential informant because access would risk retaliation against the informant. During the disciplinary proceedings, the report proved to be reliable and was supported by evidence. (Federal Penitentiary, Terre Haute, Indiana)

U.S. District Court
SEGREGATION- MAIL

Guajardo v. Estelle, 568 F.Supp. 1354 (S.D. Tex. 1983). Some types of mail may be kept from an inmate in punitive segregation. The federal court has upheld the practice of denying all publications received through the mail to inmates in punitive segregation (solitary confinement) since it served legitimate security interests of the institution. Officials contended that the threat of solitary confinement deters inmates from violating prison rules and to permit them access to books, magazines, newspapers, and other publications would "water down" the conditions, making the threat of solitary confinement meaningless. The officials asserted that, without the threat, it would be difficult to maintain security and order within the prison. The court upheld the practice reasoning that a prison rule may infringe on an inmate's first amendment rights in the interest of prison security, order or rehabilitation. (Texas Department of Corrections)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

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

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

State Court
INFORMANTS

Shumway v. Oregon State Penitentiary, 657 P.2d 686 (Ore. 1983). Informant's statement must be proven reliable if it is to be used at a hearing. A disciplinary hearing found an inmate guilty of assault on the basis of an informant's statement on a misconduct report. The total information submitted to the hearings officer read as follows: "On 12-5-81 at about 12:15 p.m. an informant who has previously proven to be reliable told me 'I saw Shumway spit on (William) Jackson and heard him threaten to firebomb Jackson.' I cannot reveal the identity of the informant as this would place him in serious danger of retaliation from other inmates."

Because the record revealed no information on which the hearings officer could have decided the reliability of the unnamed informant, the court found the hearing was improperly conducted. The clause "who has previously proven to be reliable" was an insufficient basis for a finding of guilt. The case was remanded back to the disciplinary committee. (State Penitentiary, Oregon)

U.S. Appeals Court
REGULATIONS

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

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

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

1984

U.S. District Court
DISCIPLINARY
PROCEDURES

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

1985

State Court
PROCEDURES

Catapano v. Smith, 495 N.Y.S. 856 (A.D. 4 1985). A hearing officer acted correctly in not requesting a commission monitor to testify at an inmate disciplinary hearing in light of a policy calling for monitors to remain neutral and not testify in such proceedings. The requirement is reasonable and consistent with the orderly operation of a prison, stated the court. (Attica Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
PLACEMENT IN
SEGREGATION

Grandison v. Cuyler, 774 F.2d 598 (1985). An inmate brought action challenging his confinement in a restricted housing unit. The district court determined that no due process violation had occurred. The inmate appealed. The court of appeals held that prison officials tendered no security or correctional goals as justification for failing to call as requested a witness in the misconduct hearing or for allowing the inmate only five minutes to confer with his chosen inmate representative, thus precluding the summary judgment in favor of prison officials in the inmate's civil rights action.

Prison misconduct determinations which may result in the deprivation of liberty interest must be conducted in a manner which comports with minimum federal due process standards. A prehearing statement of reasons for refusing to call witnesses requested by the inmate at the disciplinary proceeding is not required, but an explanation for refusing to call witnesses who are logically related to the institutional safety or correctional goals must be tendered at some point.

Prison officials must justify the limits placed on the opportunity of charged inmates to confer with their designated inmate assistants. (State Correctional Institution at Graterford, Pennsylvania)

U.S. Appeals Court
REGULATIONS
SEGREGATION

Gregory v. Auger, 768 F.2d 287 (8th Cir. 1985), U.S. cert. denied in 106 S.Ct. 601. Mail Restrictions for Prisoners in Disciplinary Detention Upheld. An Iowa reformatory policy of allowing only first class mail of a personal, legal or religious nature to prisoners in disciplinary detention was challenged by a prisoner when literature was withheld. The U.S. Court of Appeals for the Eighth Circuit upheld the practice.

Corrections administrators argued that the mail restrictions served a safety purpose (preventing cellblock fires and facilitating cell searches) and made disciplinary detention unattractive to other prisoners. The court agreed, stating that solitary confinement is a disciplinary measure designed to deprive prisoners of certain rights in order to promote a legitimate governmental interest in maintaining discipline. (Iowa Reformatory)

State Court
PROCEDURES

People Ex Rel Vega v. Smith, 485 N.E.2d 997 (N.Y. 1985). The high court of New York found that misbehavior reports signed by correctional officers were sufficient to reach determinations of guilt without the officers presence under the circumstances in question. Due process requirements are satisfied when the following are found: reports specify an incident; the reports are dated on the same day as the incident; they are endorsed or initialed by one or more other corrections officers; the inmates are offered assistance in preparing for the hearing; no witnesses are requested in advance; and they offer little more than a denial of the charge. The various kinds of rules for which a number of inmates were found guilty involved finding a razor blade inside a Bible, disobeying orders to stand for a head count, and also to show identification upon request. (Attica Correctional Facility, New York)

U.S. District Court
DRUG TEST

Peranzo v. Coughlin, 608 F.Supp. 1504 (D.C. NY 1985). Use of emit test (urine test for drugs) upheld. Prisoners in a state correctional facility filed a suit to stop officials from taking disciplinary actions against them based solely upon the unconfirmed results of the Syva Emit-at drug detection system. The state had adopted the system as a way to deal with the problem of narcotics in the facility.

The federal judge found that the Emit testing apparatus was a purely mechanical device which required the operator to exercise no discretion, read no graphs and make no subjective interpretations. State officials had implemented a policy of making a second test (by a different individual if possible), whenever a positive result was obtained. According to the judge, the reliability of the test as the basis for imposing disciplinary sanctions was the critical issue in the case. Noting that other tests had been found sufficiently reliable to be used in criminal trials and having reviewed various studies which had been conducted on the Emit test, the court held that "the risk that double Emit testing will result in erroneous deprivation of inmates' liberty interest has not been shown to be so significant that additional testing procedures can be required..." (New York Department of Corrections)

U.S. Appeals Court
PROCEDURES
DUE PROCESS

Shango v. Jurich, 608 F.Supp. 931 (7th Cir. 1985). A U.S. District Court had held that a prisoner charged with violation of administrative regulations must be given an advance written notice of the violation and an adequate written statement as to evidence relied on and reasons for disciplinary action taken.

Cleve Heidelberg, Jr. ("Shango") filed a suit against various officials of the Illinois correctional system as a result of disciplinary charges filed against him for extortion, sexual assault and trafficking. Shango alleged that his due process rights were denied by not being provided relevant information such as the time, date and place of the assault. In fact, this information was not even available to prison authorities themselves. Without such information, Heidelberg asserted that he was deprived of an opportunity to call witnesses and present documentary evidence.

According to the court, the minimal requirements of due process are: 1) advance written notice of the alleged violation; 2) an opportunity for the inmate to call witnesses and present documentary evidence in his defense, when doing so will not be unduly hazardous to institutional security; and 3) a written statement as to the evidence relied on and reasons for the disciplinary action. In addition, an inmate must be given the substance of any exculpatory evidence prison officials may have. The court agreed that Shango's disciplinary proceedings were deficient in all three respects. The judge particularly noted the skeletal and unconstitutional statement of the evidence relied on. The court deferred the question of damages to permit both sides to present additional arguments. (Stateville Correctional Center, Illinois)

1986

U.S. Appeals Court
PROCEDURES

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. Appeals Court
RELIGION
SEGREGATION

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

**U.S. Supreme Court
IMMUNITY**

Cleavinger v. Saxner, 106 S.Ct. 496 (1986). Supreme Court denies absolute judicial immunity to members of disciplinary hearing board and rules that members are entitled to only qualified immunity. The two plaintiffs, inmates at the Federal Correctional Institution at Terre Haute, Indiana, were charged with violating facility rules by encouraging a work stoppage. Both were found guilty of the charges and subsequently appealed. In federal district court, the plaintiffs brought suit against the disciplinary board members, the warden and the facility's administrative supervisor, alleging violation of their rights under the first, fourth, fifth, sixth and eighth amendments.

The district court initially dismissed the complaint, finding the defendants were entitled to absolute judicial immunity; two years later, the court reconsidered the case in light of the appeals court ruling in Mary and Crystal v. Ramsden, 635 F.2d 590 (7th Cir. 1980). Following a jury trial, hearing board members were found to have violated the prisoners' fifth amendment due process rights. Each member was subjected to a total liability of \$3,000 compensatory damages (\$1,500 for each prisoner). On appeal, the U.S. Court of Appeals for the Seventh Circuit affirmed the jury decision. The case was reviewed by the U.S. Supreme Court because of the importance of the issue and because Seventh Circuit rulings conflicted with the en banc decision of the Fourth Circuit in Ward v. Johnson, 690 F.2d 1096 (1982).

The Supreme Court concluded that hearing officers were not similar enough to judges to enjoy absolute immunity for their actions and are therefore protected by only the same qualified immunity which is offered to any government official sued under 42 U.S.C.A. Section 1983. Thus, when a member of a disciplinary board makes a mistake which violates a prisoner's constitutional rights, he/she may be liable for damages. (Federal Correctional Institution, Terre Haute, Indiana)

**State Appeals Court
RULES**

Coakley v. Oregon State Corr. Inst., 730 P.2d 622 (1986). A prison inmate was found guilty of destruction of property and possession of dangerous contraband and was given a three month segregation for each violation, to be served consecutively. On petition for judicial review from the Oregon State Correctional Institution, the court of appeals held that the inmate's removal of elastic from his shorts fell within the scope of a prison rule prohibiting destruction, alteration, tampering with, abuse, waste, or defacing materials or property. (State Corr. Institution, Oregon)

**U.S. Appeals Court
GOOD-TIME
DUE PROCESS**

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)

**State Court
SEGREGATION**

Edmonson v. State, 504 N.Y.S.2d 979 (Ct. Cl. 1986). There is no cause of action for money damages for the segregation of an inmate in a special housing unit one day longer in violation of regulations, ruled the high state court of New York. The action was characterized as one for false imprisonment. The court said even if the suit was instituted under 42 Section 1983, it appeared that money damages cannot be brought against the state of New York, (Queen v. Jordan, 440 U.S. 332, 99 S.Ct. 1139).

The prisoner's rights were vindicated by the dismissal of misconduct charges against him because of the violation of a speedy trial. The trial wasn't held until the eighth day of his confinement instead of the seventh day in violation of regulations. He was timely served with a misbehavior report. (Arthur Kill Correctional Facility, New York)

**U.S. Appeals Court
RULES**

Gibbs v. King, 779 F.2d 1040 (5th Cir. 1986), U.S. cert denied in 106 S.Ct. 1975. Appeals court upholds prison regulation prohibiting prisoners from making derogatory remarks about employees. A prisoner brought a 42 U.S.C. Section 1983 civil rights action following disciplinary proceedings. One element of his suit challenged a prison regulation (Disciplinary Rule Seven) which provides: "No prisoner shall make or write derogatory or degrading remarks about an employee. Employees shall not be subjected to insults, unwarranted or uncalled for remarks... Prisoners shall address employees by proper title or by 'Mr.', 'Ms.', 'Miss', or 'Mrs.' whichever is appropriate..." The appeals court found that Rule Seven "does not impermissibly inhibit prisoners' freedom of expression...Rule Seven is a reasonable and sensible response to that concern [escalation of tension and verbal challenges to authority]." (Louisiana State Penitentiary)

State Appeals Court
PROCEDURE
RULES

Guy v. State, 396 N.W.2d 197 (Iowa App. 1986). An inmate was found guilty by the prison adjustment committee of sexual misconduct and misuse of communications. The district court denied the inmate's application for post-conviction relief, and the inmate appealed. The Court of Appeals held that the adjustment committee reasonably balanced the inmate's first amendment rights with the prison disciplinary policy in finding that the inmate committed sexual misconduct and misuse of communications after a letter proposing sexual contact with another inmate was found in the inmate's cell, even though the letter had not yet been sent. A prison rule that an inmate who puts sexual proposition in a letter misuses means of communications does not require that the letter be sent, but only that the letter be written. (Men's Reformatory in Anamosa, Iowa)

State Court
PRISONER ON
PRISONER
ASSAULT
DISCIPLINE

Harper v. State, 397 N.W.2d 740 (Iowa 1986). Evidence supported a prison disciplinary determination finding a prisoner guilty of violating penitentiary rules relating to assault, sexual misconduct, and disruptive conduct in an assault on another prisoner. The evidence showed that the prisoner closed a door of a room where another prisoner was assaulted by two other inmates, and later the prisoner hosed down the area with water where the other prisoner was assaulted to wash away that prisoner's blood and to cover up the assault. (State Penitentiary, Iowa)

U.S. Appeals Court
JUVENILE
DUE PROCESS

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

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

The due process clause forbids punishment of pretrial juvenile detainees; the conditions of a pretrial juvenile detainee incarceration affect interests protected by the fourteenth amendment rather than the eighth amendment.

Instead of an award of nominal damages of one dollar, the juvenile, who had been a pretrial detainee at the juvenile detention center, should have been awarded compensatory damages for imposition of isolation without procedural due process, for being a period beyond the maximum period set out in regulations of the Florida Department of Health and Rehabilitative Services, and for his humiliation and dejection sustained as a result of such isolation, where the juvenile was isolated for several days, shackled and handcuffed to a metal bunk for part of that time, and deprived of virtually every physical or emotional stimulus. (Volusia Regional Juvenile Detention Center, Florida)

U.S. District Court
CORRESPONDENCE
SEGREGATION

Jackson v. Brookhart, 640 F.Supp. 241 (S.D. Iowa 1986). A prisoner, whose mail (except for religious or legal mail) was withheld for the 286 days she served in disciplinary detention, as a result of thirty-eight separate disciplinary proceedings, brought action against prison officials alleging violation of her first amendment right to read and possess literature. The district court held that the prison policy furthered a substantial governmental interest in deterring future misconduct and limitation on the prisoner's first amendment freedoms and was no greater than was necessary or essential to governmental interests involved. (Iowa Medical and Classification Center)

U.S. Appeals Court
EXERCISE

Leonard v. Norris, 797 F.2d 683 (8th Cir. 1986). It did not violate the cruel and unusual punishment clause of the eighth amendment to give inmates in punitive isolation no out-of-cell exercise for the first fifteen days of punitive confinement. The exercise policy, although severe, and perhaps even harsh, was not cruel or barbaric. It had the purpose of discouraging disruptive behavior that made an inmate unfit to circulate among the prison's general population. (Cummins Unit, Department of Corrections, Arkansas)

U.S. Appeals Court
CORRESPONDENCE

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
VISITS**

Morgan v. District of Columbia, 647 F.Supp. 694 (D.D.C. 1986). Whether a prisoner was denied due process when his punishment was increased by the loss of visitation privileges involved disputed questions of fact, precluding summary judgment in the prisoner's Section 1983 suit. The prisoner had a liberty interest in visitation. If the prisoner's adjustment segregation did not coincide with the rescission of visitation privileges, or the visitation privileges were not imposed by the Adjustment Board, he would be entitled to some due process before his visitation privileges could be suspended. (Maximum Security Facility at Lorton, Virginia)

**U.S. District Court
RESTITUTION**

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)

**State Appeals Court
DRUG TEST**

Sanchez v. Hoke, 498 N.Y.S.2d 535 (A.D. 3 Dept. 1986). A new hearing was held regarding an inmate's possession of marijuana, since prison officials failed to lay a foundation for introducing the nature of the test and the procedures used. A proper foundation requires that the nature and procedures be included on a urinalysis procedure form for introducing urinalysis test results. (Eastern New York Correctional Facility)

**J.S. Appeals Court
DRUG TEST**

Spence v. Farrier, 807 F.2d 753 (8th Cir. 1986). Not only are EMIT brand urine test results good evidence in prison disciplinary hearings, but inmates have no right to present expert testimony in regard to EMIT reliability, according to a federal appellate court.

Inmates at the Iowa State Penitentiary filed a suit against prison officials contending that use of EMIT test results without independent, confirmatory tests violated their due process rights, as did the refusal to allow them to run corroborative tests or to call testing personnel or expert witnesses to challenge EMIT results. The court noted that in a prison setting, due process requirements are satisfied if some evidence supports the decision of the prison disciplinary board. Since EMIT tests results are ninety-five percent accurate, they obviously provide some evidence of drug use, the court said. Thus, the use of the test with the confirmatory second EMIT test is sufficiently reliable to provide evidence of drug use.

The court also noted that to allow prisoners to present expert testimony in regard to EMIT reliability would seriously interfere with the institutional goal of drug deference and prompt resolution of drug related infractions. Although it is conceivable that an inmate could be unjustly disciplined as a result of EMIT tests, the margin of error is insignificant in light of institutional goals, according to the court. Therefore, Iowa need not implement all possible procedural safeguards against erroneous deprivations of liberty when utilizing results of scientific testing devices in disciplinary proceedings. (Iowa State Penitentiary)

U.S. District Court
RECLASSIFICATION

Strickland v. Dyer, 628 F.Supp. 180 (E.D.Ark. 1986). An inmate brought an action challenging his reclassification by a prison disciplinary committee. On the defendants' motion to dismiss, the district court held that an Arkansas statute governing classification of inmates did not protect the inmate's right to any particular classification, so that reduction of the inmate's classification for violation of a prison rule did not violate the inmate's due process rights. (Department of Corrections, Arkansas)

U.S. Appeals Court
RULES

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 being 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 has chosen to conceal the contraband to protect himself from future attacks. (Mens Queens House of Detention, New York)

1987

U.S. District Court
PUNISHMENT

Artway v. Scheidmantel, 671 F.Supp. 330 (D.N.J. 1987). According to the district court, the penalty imposed on a prisoner was found to be constitutionally defective. The prisoner had destroyed a sink in his cell. The superintendent had determined the amount for restitution to be withdrawn from the prisoner's account without a hearing or a jury trial. The court ruled that this procedure denied him of property without due process of law, and that a prisoner had a constitutionally protected property right in the monies of his prison account. (Adult Diagnostic and Treatment Center, New Jersey)

U.S. Appeals Court
DUE PROCESS
DISCIPLINARY
PROCEDURES

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
SEGREGATION
PUNITIVE
SEGREGATION
CORRESPONDENCE
DISCIPLINARY
PROCEDURES

Brooks v. Andolina, 826 F.2d 1266 (3rd Cir. 1987). A federal appeals court ruled that (1) it is unlawful to place an inmate in segregation simply because he wrote a letter complaining of a female employee's search of a visitor, (2) prison officials' refusal to permit an inmate to call any witnesses at a disciplinary proceeding violated the inmate's procedural due process rights, and (3) the inmate was not entitled to lost wages. An inmate complained in a letter to the NAACP that a female correctional officer searched his visitor in a seductive manner. He was issued a misconduct report

for disrespect toward a staff member, and after a hearing, was sentenced to 30 days punitive segregation. The Third Circuit Court of Appeals noted that the Supreme Court has clearly ruled that prison officials may not censor inmate correspondence to eliminate unflattering or unwelcome opinions, (*Procunier v. Martinez*, 416 U.S. 396). Further, prison officials cannot punish inmates for statements made in letters to outsiders, even if the inmate could be punished if he made the statements orally to a prison employee. The court continued that if regulations concerning censoring are in existence, they must be for the purpose of security, order, or rehabilitation. Because prison officials cannot censor unflattering statements in letters to outsiders, they cannot punish an inmate for the contents of such letters; therefore, the action taken against Brooks for writing the letter violated his constitutional rights. Prison officials' refusal to permit an inmate to call any witnesses at a disciplinary proceeding violated the inmate's procedural due process rights. The officials failed to show that permitting the inmate to call witnesses would have been unduly hazardous to the institutional safety or correctional goals, and to the extent that refusal by prison officials to permit the inmate to call witnesses at a disciplinary proceeding was based on the inmate's failure to comply with the rule requiring prehearing identification of witnesses. The refusal was clearly arbitrary and capricious in that the rule was a new rule to which the inmate had no access and with which the inmate had no opportunity to comply. (State Correctional Institute at Pittsburgh, Pennsylvania)

**U.S. District Court
DUE PROCESS**

Bruscino v. Carlson, 654 F.Supp. 609 (S.D. Ill. 1987). Action was brought by federal inmates complaining of use of excessive force, performance of rectal searches, amount of time they had to spend in their cell, transfer procedures and various other conditions that had existed at prison since "lockdown" began. On objections to magistrate's report and recommendation, the district court held that: (1) restraining control unit inmates during legal visits did not violate their right of access to the courts; (2) rectal searches at the prison did not constitute unnecessary and wanton infliction of pain within the meaning of the eighth amendment; (3) restraining federal inmates to beds for prolonged periods without checking them every thirty minutes violated federal regulations but because incidents were isolated, there was no policy or practice of abuse and thus no constitutional violation requiring injunctive relief; (4) "out of cell time" granted federal prisoners for exercise and recreation did not violate the eighth amendment where the inmates in disciplinary segregation and protective custody were allowed five hours exercise per week outside their cells, and the prisoners in control unit were permitted seven hours exercise per week; and (5) inmates had no right to a due process hearing before placement at and/or transfer to a maximum security federal prison. Although control unit inmates at the prison were given a hearing before placement in that unit, there were distinct differences between conditions of confinement for general population and control unit. (Marion Penitentiary, Illinois)

**State Court
EXPUNGEMENT
RULES**

Burgos v. Kuhlmann, 523 N.Y.S.2d 367 (Sup. 1987). A state court found that the posting and publication of prison rules and regulations is not sufficient to satisfy a statutory mandate for promulgation of rules and regulations. A copy of the rules and regulations must be provided to the inmates--in their own language. In this case, a Spanish inmate who could not read English claimed that he was given a copy of the prison rules and regulations which were in English. He asserted that he should not be disciplined under these rules and regulations because of his inability to understand them and asked for a dismissal of charges against him and expungement from his records of any reference to a hearing. The Court concurred, ruling that, since this inmate did not read or comprehend the English language, providing him with an English version of the rules and regulations was that same as "...providing him with nothing." (Sullivan Correctional Facility)

**U.S. District Court
DISCIPLINARY
PROCEDURES
WITNESS**

Carter v. Fairman, 675 F.Supp. 449 (N.D.Ill. 1987). An inmate failed to state a Section 1983 cause of action based on the failure of a prison disciplinary committee to interview a witness. A report given to the inmate specifically notified him of his right to request that a witness be called and included a detachable form on which the inmate could request witnesses. The inmate did not sign the report and made no written request before the hearing. However, the court noted that the burden of establishing a legitimate reason for denying an inmate's request to call a witness remains with the prison official. The prison official's mere articulation of a reason for denying an inmate's request to call a witness at a disciplinary hearing does not immunize the official from suit. (Joliet Correctional Center, Illinois)

**U.S. District Court
INFORMANTS
SEGREGATION**

Cato v. Rushen, 824 F.2d 703 (9th Cir. 1987). An inmate who was subjected to administrative segregation brought a civil rights action was brought 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
DUE PROCESS
DISCIPLINARY
PROCEDURES

Culbert v. Young, 834 F.2d 624 (7th Cir. 1987), cert. denied, 108 S.Ct. 1296 (1988). An inmate brought a Section 1983 action against the superintendent of a state correctional institution in which he claimed that the superintendent violated due process rights by improperly processing certain disciplinary conduct reports as major rather than minor offenses and by failing to provide adequate statements as evidentiary basis for finding him guilty of those violations. The federal district court determined that the inmate did not have a protectable liberty interest in having conduct reports classified as minor and that a written statement of reasons provided by the superintendent satisfied due process. The inmate appealed. The appeals court held that: (1) a procedural regulation which permitted the security director to consider certain criteria in making a determination regarding the classification of offenses did not create a liberty interest on behalf of the inmate in having such criteria considered and thus, the security officer's failure to consider such criteria did not violate the inmate's due process rights; and (2) a statement of reasons as to how the disciplinary committee made guilt determination was constitutionally sufficient. According to the court, the type of statements made by a disciplinary committee regarding the evidentiary basis for disciplinary action taken against a prisoner that will satisfy constitutional minimum will vary from case to case depending upon the severity of charges and complexity of factual circumstances and proof offered by both sides. (Wisconsin Correctional Facility)

U.S. Appeals Court
DUE PROCESS

Dzana v. Foti, 829 F.2d 558 (5th Cir. 1987). A federal appeals court ruled that an IRS detainee who was confined by contractual arrangement in an Orleans Parish prison and was facing disciplinary segregation for approximately a month was entitled to the Wolff level of due process, which included an adversary proceeding and advance written notice. As a result of the IRS citing the detainee's disciplinary record as a reason for withdrawing his bond, the prison discipline had further consequences than disciplinary segregation, and made the detainee more closely resemble the prisoners in Wolff, who faced segregation and loss of good time, than the prisoners in Helms and McCrae, who faced only segregation. Although local statutes and regulations, if they significantly limit prison authorities' discretion and carry mandatory force, can create a liberty interest a due process clause, by itself, does not grant a prisoner the right to be free from segregation. (Orleans Parish Prisons)

U.S. District Court
DISCIPLINARY
PROCEDURES
WITNESS

Gilmore v. Jeffes, 675 F.Supp. 219 (M.D. Pa. 1987). According to a federal district court, an inmate who was denied permission to present oral testimony at a disciplinary hearing from more than one witness stated a federal civil rights claim against the hearing examiner. However, even though an inmate enjoys a limited constitutional right to call witnesses at his disciplinary hearing, prison officials may have possessed valid reasons, rooted in prison security or otherwise, for limiting the number of witnesses testifying on the inmate's behalf, which could be considered in a subsequent summary judgment motion. (State Correctional Institute, Dallas, Pennsylvania)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Glick v. Walker, 834 F.2d 709 (8th Cir. 1987). According to a federal appeals court, a Department of Corrections policy that states all disciplinary committee members must be employed for at least six months in the Department dealing firsthand with inmates did not create a liberty interest. Even if a liberty interest were found, the Department's lack of intent to deprive an inmate of any interest defeated his section 1983 action. The action was brought by an inmate who alleged that an ineligible committee member had been allowed to sit on the disciplinary committee which heard his case. The court noted that the failure to restore a state prison inmate's institutional classification and good-time credit after reversal of disciplinaries was based on a major disciplinary separate from and subsequent to reversal of the prior disciplinaries (a compliance attorney had ruled that due to ineligibility of a disciplinary committee member the decision of the board should be reversed). The court concluded that the inmate was not deprived of due process. (Arkansas Department of Corrections)

U.S. District Court
DUE PROCESS

Hechavarría v. Quick, 670 F.Supp. 456 (D.R.I. 1987). A Rhode Island regulation providing that an inmate shall receive timely written notice when a downgrading of his classification is being considered, and a regulation providing that no misconduct shall be considered by the classification board unless the disciplinary board has made a finding unfavorable to the inmate, do not create a liberty interest in a particular prison classification. The regulations are purely procedural in nature, and do not state that an inmate has a vested right to a particular prison status. (Rhode Island Adult Correctional Institution)

U.S. Appeals Court
DISCIPLINARY
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)

J.S. Appeals Court
WITNESSES
DUE PROCESS

Malek v. Camp, 822 F.2d 812 (8th Cir. 1987). A federal appeals court ruled that a claim that the chairman of the prison disciplinary committee was personally biased against an inmate due to the inmate's assistance to another inmate in filing a pending action against the chairman stated grounds for relief under Section 1983. However, the court found that the prison disciplinary committee did not violate the inmate's due process rights by denying the inmate permission to call approximately 13 witnesses in the proceeding which arose as a result of the inmate's refusal to participate in mandatory gym activities. The inmate testified on his own behalf and introduced a written statement of another inmate supporting his claim that he was too ill to attend gym on the day in question. (Lincoln Correctional Center)

U.S. Appeals Court
RELIGION

Muhammad v. Wainwright, 839 F.2d 1422 (11th Cir. 1987). An inmate brought a civil rights action in which he alleged that prison officials had violated his First Amendment rights by disciplining him. The inmate was disciplined for refusing to respond to the name under which he was committed to the prison, stating that he wanted to be called by his Islamic name. The federal appeals court ruled that, at the time the prisoner filed his lawsuit, the prison officials were entitled to qualified immunity because these was not a "clearly established constitutional right" to not be disciplined for failure to respond to his committed name during role call. (Florida State Prison, Starke, Florida)

U.S. Appeals Court
DUE PROCESS
PUNISHMENT

Ort v. White, 813 F.2d 318 (11th Cir. 1987). A prison officer's denial of water to an inmate was not cruel and unusual punishment where the inmate refused to carry a water keg to the farm work site, the farm squad remained away from the prison for the entire day under supervision of a single officer, the officer's actions were necessary coercive measures undertaken to obtain compliance with a reasonable prison rule that inmates perform their assigned farm squad duties, the officer denied the inmate water only when he refused to carry the keg or refused to work, the officer's actions were necessary to prevent a possible disturbance by other inmates on the farm squad, and the inmate was allowed to drink water when he performed work required of all inmates on his farm squad. Although the officer did not follow usual procedures for filing a disciplinary report and conducting a disciplinary hearing before taking action, because the officer was alone in the field supervising an inmate work squad when he was confronted with spontaneous disruption by one of the inmates in his group, the work squad was to be away from the prison for the entire day, and the officer had to take action to maintain discipline and control until the squad returned to the prison, his actions did not violate inmates' due process rights. (Stanton Correctional Facility)

U.S. Appeals Court
DUE PROCESS
PUNISHMENT

Quam v. Minnehaha County Jail, 821 F.2d 522 (8th Cir. 1987). An inmate could not establish that he was denied due process by the restriction and denial of his jail privileges, absent any evidence of a state-created liberty interest in those privileges. The privileges were withdrawn from the inmate's entire cell block, which housed inmates who were transferred from the South Dakota State Penitentiary following their involvement in a disturbance, in response to a discovery of contraband in the possession of two inmates. (Minnehaha County Jail)

U.S. District Court
DISCIPLINARY
PROCEDURES

Quinlan v. Fairman, 663 F.Supp. 24 (N.D. Ill. 1987). A corrections officer's testimony that he saw an inmate taking part in a beating of another inmate was sufficient to support a disciplinary board's finding the defendant guilty of violating prison rules, notwithstanding the affidavits of two inmates, including the alleged subject of the beating, contradicting that testimony. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
RULES
DUE PROCESS

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

U.S. District Court
RULES
DUE PROCESS

Robinson v. Young, 674 F.Supp. 1356 (W.D. Wis. 1987). An inmate had a liberty interest in not having his conduct reports upgraded from "minor" to "major" violations without a statement of reasons. Prison regulations stated that specified criteria "should be considered." Moreover, the regulations used the mandatory word "shall" in describing the director's duty to consider the criteria and to indicate the reason for the decision. The statement of reasons given by a disciplinary committee for its finding of guilt with respect to a conduct report was not sufficient to comply with principles of

due process, where the statement of reasons indicated only that the hearing officer evaluated all evidence and reached the conclusion that a written statement of the complaining officer was correct. Therefore, the inmate was entitled to expungement from his prison records of conduct reports that were found to be processed as major offenses in violation of his due process rights or on which he was found guilty without adequate statement of reasons, as a remedy in a federal civil rights action. The court ruled that the inmate's interest in avoiding undeserved adverse consequences outweighed prison officials' interest in maintaining adequate records and insuring prison security. (Waupun Correctional Institution, Wisconsin)

State Appeals Court
EXPUNGEMENT
GOOD-TIME

Sanchez v. Coughlin, 518 N.Y.S.2d 456 (A.D. 3 Dept. 1987). An inmate sought review of determination that he violated disciplinary rules. Following transfer from the Supreme Court, Ulster County, the Supreme Court held that evidence was insufficient to show that the inmate violated any prison rules when a revolver was found in a package which had been brought to him by members of his family but which he never possessed nor controlled. The appeals court found there was insufficient evidence to show the inmate had anything to do with a plan to smuggle him a gun and he was being punished "not for what he in fact did, but what it is speculated and surmised he did." The court ordered that the incident be removed from his correction and parole records and his lost good-time be restored. However, the court did not grant full back prison wages, stating that this relief is "not awardable." (Eastern Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS

Turney v. Scroggy, 831 F.2d 135 (6th Cir. 1987). An inmate brought a Section 1983 action against prison officials based on a disciplinary report charging the inmate with sexual assault upon a prison nurse. Prison officials moved for summary judgment on grounds of qualified immunity. The federal appeals court held that (1) qualified immunity available to members of prison adjustment committee applied to the warden, prison nurse, and investigating officer; (2) "some evidence" supported the decision finding the inmate guilty of sexually assaulting the nurse; and (3) determination that the inmate's due process rights were not violated in disciplinary proceeding extinguished the inmate's claim for injunctive relief. (State Penitentiary, Eddyville, Kentucky)

U.S. Appeals Court
PROSECUTION

U.S. v. Kazenbach, 824 F.2d 649 (8th Cir. 1987). A federal appeals court ruled that evidence sustained an inmate's convictions for assaulting correctional officers. The inmate suffered from AIDS or AIDS Related Complex. There was sufficient evidence for the jury to find the requisite intent to assault each of the officers, although the inmate specifically denied spitting, kicking or swinging at the officers, and denied intentionally or willfully biting one of the officers. Moreover, the evidence sufficiently demonstrated that the inmate's actions constituted more than a single blow or act. (United States Medical Center for Prisoners, Springfield, Missouri)

U.S. District Court
DUE PROCESS

Vines v. Howard, 676 F.Supp. 608 (E.D. Pa. 1987). A prisoner brought action against a hearing examiner and a correctional officer, alleging that he had been denied due process due to the father-son relationship between the hearing examiner and the correctional officer. A federal district court found that the kinship between disciplinary adjudicator and a corrections officer who initiates misconduct charge or who testifies at disciplinary hearing irreparably taints a disciplinary tribunal's impartiality, ruling that the inmate was entitled to the appointment of counsel and a new disciplinary hearing. (State Correctional Institution, Graterford, Pennsylvania)

U.S. Appeals Court
INFORMANTS

Zimmerlee v. Keeney, 831 F.2d 183 (9th Cir. 1987), cert. denied, 108 S.Ct. 2851. The reliability of a confidential informant can be established by the use of polygraph examinations, according to a federal appeals court. A prisoner was charged with distributing narcotics within the prison and was sentenced to six months segregation. The prisoner appealed this finding on a number of grounds, including the fact that the disciplinary committee had relied on an unidentified informant eye witness account as the sole basis for finding him guilty. The federal appeals court acknowledged that there was a need in prison settings to use information from confidential informants. But they noted that reliability is very important when a disciplinary committee bases its decision upon information from such a source. In this case, the court said such evidence of reliability was available because the informant's testimony was corroborated by a polygraph examination administered by a state certified and licensed examiner. Such polygraph examinations are admissible in state disciplinary hearings to establish the reliability of the informant's testimony, they said. (Oregon State Penitentiary)

1988

U.S. District Court
DRUG TESTING
DISCIPLINARY
PROCEDURES

Adkins v. Martin, 699 F. Supp. 1510 (W.D. Okl. 1988). An inmate filed a petition for a writ of habeas corpus, challenging the institutional urinalysis testing program that detected his alleged use of contraband drugs. The federal district court dismissed the writ of habeas corpus, ruling that the use of enzyme immunoassay testing of urine

samples, in conjunction with other methods, was sufficiently reliable so that use of the test results as evidence in a prison disciplinary proceeding did not violate due process. The court also ruled that the fact that the incident report form arising out of the inmate's positive drug test indicated that the urine sample had been taken in the unit to which the inmate had been assigned, when in fact the specimen had been taken in the compound lieutenant's office, was a minor error and did not show errors or possibility of errors in the collection and safeguarding of the specimen. (Federal Correctional Institution, El Reno, Oklahoma)

**U.S. District Court
DISCIPLINARY
PROCEDURES
SEGREGATION**

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

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

According to the court, the fact that the inmate was confined to his cell pending a disciplinary hearing that did not transpire did not violate a liberty interest. The confinement was administrative, not disciplinary. (Sing Sing Correctional Facility, New York)

**U.S. Appeals Court
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. District Court
WITNESS
EXPUNGEMENT**

Feagin v. Broglin, 693 F.Supp. 741 (N.D.Ind. 1988). An inmate brought a civil rights action against a prison superintendent, contending in part that a violation of his limited right to call witnesses in a disciplinary proceeding necessitated expungement of his disciplinary record. The district court found that, even if the inmate's right was violated, equitable remedy of expungement was not appropriate. The inmate, who claimed that his request for additional witnesses in a disciplinary proceeding was denied, was not required to show that his would-be witness would not have been repetitive and cumulative before he could be deemed to have been deprived of any constitutional right. A later finding that the inmate had in fact been involved in the assault of the guard was entitled to substantial weight, and there was considerable institutional interest in maintaining accurate records to reflect such violent conduct. (Westville Correctional Center, Indiana)

**U.S. Appeals Court
DISCIPLINARY
PROCEDURES
INFORMANTS**

Hensley v. Wilson, 850 F.2d 269 (6th Cir. 1988). According to a federal appeals court, when confidential informant information is used in prison disciplinary proceedings, a contemporaneous recording of evidence of the informant's reliability must be made. Inmates at the Kentucky State Penitentiary sued prison officials after they were found guilty almost entirely on the strength of confidential information provided to prison investigators by inmate informants. No details about the identity, reliability or credibility of the informants was provided to the inmates. According to prison records,

the only reference in the disciplinary committee's finding as to the reliability of the informants was that the investigating officer "testified" that the source of the information was reliable. The court of appeals ruled that: (1) prison officials were entitled to qualified immunity because any violations of inmate rights they committed were not of "clearly established law;" (2) where confidential informants are used the committee must make an independent determination that the hearsay information has been supplied by a reliable informant; and (3) it is necessary that the committee explain its reasons in writing for relying on a particular informant's testimony. (Kentucky State Penitentiary)

State Supreme Court
REFUSAL TO
WORK

Lee v. Coughlin, 530 N.Y.S.2d 884 (A.D. 3 Dept. 1988). A prisoner brought an Article 78 proceeding seeking a review of a determination of the Commissioner of Correctional Services finding the prisoner guilty of violating certain prison disciplinary rules. The State Supreme Court dismissed the petition, and appeal was taken. The supreme court affirmed the judgment and found that the prisoner did not have a liberty interest in obtaining a job closely suited to his perceived abilities, nor did he have a protected right to meet with a counselor prior to such assignment, and the prisoner's refusal to consent to employment, as well as to take a literacy test, constituted a disobedience of direct orders warranting discipline. The prisoner, who was transferred from another facility, was informed that he would be assigned to work in the mess hall. The prisoner refused, arguing that since he had completed college and had worked in a prison academic program for ten years, he should be offered a job commensurate with his abilities. He was found guilty of misbehavior for refusing to report for a mandatory literacy test, refusal to report to the mess hall and other infractions. He sought court review of his penalties of confinement to cell for 50 days and loss of commissary, packages and phone call privileges. (Mt. McGregor Correctional Facility, Saratoga County, New York)

U.S. District Court
DUE PROCESS
LENGTH OF
SEGREGATION
SEGREGATION

Morgan v. Ward, 699 F.Supp. 1025 (N.D.N.Y. 1988). Individual inmates filed Section 1983 actions against various guards and prison officials for alleged deprivation of civil rights. The prison policy mandating unreasonable routine body cavity searches is addressable under both the fourth and eighth amendments. Visual body cavity searches performed on inmates housed in disciplinary segregation prior to contact visits were unreasonable given the nonexistence of the possibility the inmates would smuggle anything out of the prison. (Clinton Correctional Facility, Dannemora, New York)

State Supreme Court
WITNESS
INSANITY
DEFENSE

People Ex Rel. Reed v. Scully, 531 N.Y.S.2d 196 (Sup. 1988). A prisoner brought a petition for habeas corpus arising from a prison disciplinary proceeding in which he was found in violation of rules for killing another inmate. The state supreme court reversing and annulling, and remanding for further proceedings, found that the mental competence and mental illness of a prisoner must be considered during a prison disciplinary process in determining whether substantial evidence supports a finding of culpability where the prisoner had been adjudicated not guilty by reason of insanity on criminal charges arising from the same conduct or has a well-documented history of serious psychiatric problems. The prisoner must be given an opportunity to submit proof concerning his mental state, have an inmate assistant appointed to advocate on his behalf, and should be able to obtain psychiatric evaluation. The court also found that the habeas corpus proceeding would be converted into one for an Article 78 review, and substantial evidence did not support the hearing officer's determination of culpability given the failure to consider the petitioner's mental state. The court noted that there is no explicit authority for a prisoner having either a federal or a New York State constitutional due process right to an insanity defense in the prison disciplinary setting. In this case, however, in the limited situation where a criminal court has found the prisoner not guilty by reason of insanity, the prisoner's mental condition is a factor which must be considered in deciding whether the disciplinary determination is supported by "substantial evidence." (Greenhaven Correctional Facility, New York)

State Appeals Court
WITNESS
PUNISHMENT
EVIDENCE

Perez v. Coughlin, 536 N.Y.S.2d 207 (A.D. 3 Dept. 1988). An inmate was charged with holding a prisoner while the latter was being stabbed by another inmate. On the sole evidence of the victim's testimony, he was found guilty of disciplinary charges and sentenced to 18 months of keeplock, loss of good time and various privileges. In deciding the penalty, the hearing officer made a finding that the assault appeared to be part of an extortion scheme. On appeal, the court found that the testimony of the victim, standing alone, was sufficient for a finding of guilt. Since other confidential information in the misbehavior report identifying the prisoner as involved in the assault was not relied upon, it was not necessary to divulge that information or to provide a basis for keeping it confidential. However, since there was no evidence in the record of any extortion scheme, and it was both uncharged and unproven, the hearing officer erred in taking it into account in setting the penalty. Further proceedings were ordered to redetermine the penalty. (Clinton Correctional Facility, New York)

State Court
ASSISTANCE
DUE PROCESS

Scott v. Kelly, 533 N.Y.S.2d 157 (A.D. 1988). A requirement that a prisoner select an assistant to help with his defense from a list limited to correctional officers did not violate due process. The prisoner asked for a corrections counselor to assist with his defense of disciplinary charges. The request was denied because counselors were available to assist only those inmates confined in special housing units. He then refused to select an assistant from the established list because the remaining assistants on the list were all correctional officers. The court rejected the prisoner's claim that he was denied due process in the selection of an assistant. An inmate has no constitutional due process right to the selection of any particular person as his assistant. (Attica Correctional Facility, New York)

U.S. Appeals Court
IMMUNITY

Shelly v. Johnson, 849 F.2d 228 (6th Cir. 1988). An inmate brought a 42 U.S.C.A. Section, 1983 civil rights action against a prison hearing officer and prison officials; a federal appeals court found the officer was entitled to absolute immunity from federal civil rights lawsuits because the officer was an attorney specially appointed to conduct disciplinary hearings and was completely independent of prison officials and was guided by strict statutory guidelines and was, for all practical purposes, an administrative law judge. (Michigan Intensive Program Center)

U.S. District Court
DUE PROCESS
DRUG TEST

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

U.S. District Court
DUE PROCESS
RULES

Staples v. Young, 679 F.Supp. 884 (W.D. Wis. 1988). An inmate brought an action for violation of his constitutional right to due process based on processing of charges against him as a major offense without a written explanation of upgrading the charges. The district court found that the Wisconsin administrative code gave the inmate a liberty interest in not having his conduct reports upgraded from minor to major violations without an explanation on the record and ordered accordingly. (Wisconsin State Prison)

U.S. District Court
DUE PROCESS

Taylor v. Koon, 682 F.Supp. 475 (D.Nev. 1988). An inmate was denied procedural due process when he was placed in disciplinary detention prior to notice and a hearing, according to a federal district court. The inmate was charged with disobeying orders to move from administrative segregation to general population housing. The perceived need by the warden for immediate disciplinary action in order to deter disobedience on the part of other inmates was not the sort of need justifying such immediate action. (Nevada State Prison)

U.S. District Court
DUE PROCESS
SEGREGATION
PUNISHMENT

U.S. v. State of Michigan, 680 F.Supp. 270 (W.D. Mich. 1988). The United States brought action against the state contesting the state prison's use of "food loaf" for prisoners in segregation units. The District Court held that: (1) use of food loaf did not violate consent decree; (2) use of food loaf did not constitute cruel and unusual punishment; (3) due process did not require holding of disciplinary hearing prior to imposition of food loaf punishment; and (4) a policy permitting use of food loaf as punishment even when misconduct charge upon which that punishment was based had been dismissed was violative of due process. The federal district court found that the use of a "food loaf" to feed inmates in a segregation unit who had engaged in prohibited cafeteria behavior did not violate a consent decree entered into by prison, which required it to serve meals to prisoners in segregation which were "essentially the same" as meals served to the general population; the court noted that the content of the food loaf was essentially similar to content of normal prison meals, and was only fed to prisoners as a result of their negative conduct. Further, the food loaf was prepared from the same ingredients which made up regular prison meals, with its contents varying from day to day. However, the prison policy that allowed a hearing officer to continue an inmate's "food loaf" punishment, even though a misconduct charge was dismissed for "procedural reasons" violated prisoners' due process rights in that the policy increased the possibility of arbitrary punishment and erroneous deprivations. The food loaf is a substance prepared by grinding up and combining the various components of a regular prison meal. This substance is formed into a loaf and

baked. The baked loaf is then tightly wrapped in plastic and served to the inmate without tray or utensils. All parties appear to agree that the caloric and nutritional content of the food loaf is substantially similar to the caloric and nutritional content of normal prison meals. At present, the Department's Policy Directive provides that: a prisoner housed in segregation may be immediately placed on the food loaf if he or she is observed engaging in any of the following behavior (1) Misuse of food, serving tray, or eating utensils; (2) Refusing or failing to return uneaten food, the serving tray, dishes or eating utensils to the door slot...; (3) Destroying a serving tray or throwing a tray or food; or (4) Using containers to hold or throw other substances, such as human waste products. (Southern Michigan Prison)

U.S. District Court
RULES

Watson v. Smith, 682 F.Supp. 225 (S.D.N.Y. 1988). An inmate who was denied parole on the basis of prison discipline failed to show that the rules under which he was disciplined were void for vagueness. His confinement for long periods in a special housing unit was for violent assaults, and he did not articulate any claim that the rules against violent assaults were vague. Accordingly, the inmate was not deprived of a fair parole hearing by the parole board's reliance on the disciplinary proceedings. (Greenhaven Correctional Facility, New York)

State Appeals Court
ASSISTANCE
TRANSLATORS

Wong v. Coughlin, 526 N.Y.S.2d 640 (A.D. 3 Dept. 1988). An inmate sought review of a determination of the Commissioner of Correctional Services finding the inmate guilty of violating certain prison disciplinary rules. The supreme court, appellate division confirmed the decision, finding that the evidence was sufficient to support a finding that the inmate was guilty of assault and of committing a Penal Law offense, and the inmate was not denied due process by the alleged failure to furnish the inmate with a copy of a rule book and notice of misbehavior report in Chinese or by the failure to provide the inmate with employee assistance. Evidence that although the inmate preferred and was more comfortable speaking Chinese, that he was sufficiently well versed in English to enable him to have comprehended the charges against him and to understand and knowledgeably participate in hearings and that the inmate was provided with a translator at each hearing and that the inmate received copies of the misbehavior report in both English and Chinese established that the inmate's due process rights were not violated by the failure to furnish the inmate a copy of the rule book and notice of the misbehavior report in Chinese. (Clinton Correctional Facility, New York)

1989

U.S. District Court
IMMUNITY

Banks v. Klapish, 717 F.Supp. 520 (W.D. Mich. 1989). A civil rights action was brought against a hearing officer, a corrections officer and a deputy warden by a Michigan state inmate following a misconduct hearing. This resulted in the inmate being found guilty of disobeying a direct order and displaying threatening behavior.

The U.S. District Court found that the hearing officer was entitled to absolute judicial immunity from liability in the inmate's action challenging the acts of the officer in conducting an administrative hearing. This was a quasi-judicial act within the hearing officer's jurisdiction.

The court ruled that the general claims of the plaintiff of harassment by a corrections officer were not cognizable under Section 1983. Even assuming that a misconduct charge against the inmate was motivated because of a wish to harass him, the inmate was not denied due process by being falsely charged of a violation of prison rules as long as the inmate got an opportunity to rebut the charge at the hearing.

According to the court, the warden would not have violated any of the inmate's constitutional rights even if he received a letter from the inmate outlining the correction officers' allegedly harassing conduct and chose to do nothing about it. The allegations that were established by the inmate show only that the warden was negligent or failed to exercise due care in addressing the inmate's concerns. (Michigan Reformatory, Ionia, Michigan)

U.S. District Court
DISCIPLINARY
PROCEDURES
HEARING IMPAIRED

Bonner v. Arizona Dept. of Corrections, 714 F.Supp. 420 (D. Ariz. 1989). A deaf inmate brought an action against a state correctional facility alleging deprivation of his rights under a statute prohibiting discrimination against handicapped persons by programs receiving federal financial assistance. The U.S. District Court granted summary judgment for the state, and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded the case. On remand, the District Court found that the Civil Rights Restoration Act, which defined the term "program or activity" in the Handicapped Act to include all operations of a department or agency receiving federal funds was entitled to retroactive effect. It also stated that a deaf, mute, and vision-impaired inmate had a constitutionally protected liberty interest in the presence of a qualified sign language interpreter at all stages of the prison's disciplinary procedure. "To require a deaf, mute, and vision-impaired inmate to navigate" through the disciplinary process "without a qualified interpreter certainly would not agree with the department's stated goal of accomplishing discipline with dignity, reason and humaneness." (Arizona State Prison)

**U.S. Appeals Court
DUE PROCESS**

Bostic v. Carlson, 884 F.2d 1267 (9th Cir. 1989). An inmate filed pro se petitions for habeas corpus, seeking relief from disciplinary convictions. The U.S. District Court dismissed the petitions and the inmate appealed. The Appeals Court found that the inmate was not denied due process because a disciplinary hearing was postponed twice. The court also found that the disciplinary committee was not constitutionally required to ascertain that the inmate's guilty plea to the disciplinary charge was voluntary; and the inmate has no claim for ineffective assistance of counsel at a disciplinary hearing.

Habeas corpus jurisdiction is available for a prisoner's claims that he has been denied good-time credits without due process of law, or when he has been subjected to greater restrictions of his liberty, such as disciplinary segregation, without due process of law. It also exists when an inmate seeks deletion of a disciplinary finding from his record if deletion is likely to accelerate the inmate's eligibility for parole.

An eyewitness account by the reporting officer and a statement by an inmate witness that he heard the accused inmate challenge another inmate to fight was sufficient to support disciplinary convictions for fighting with another prisoner and refusing to obey an order from a member of the staff. The officer's description of the incident in the report as "stealing," rather than as "possession of contraband," did not deprive the inmate of notice and opportunity to present a proper defense. The report described a factual situation that was the basis for the finding of guilt of possession of contraband and alerted the inmate that he would be charged with possessing something he did not own. (Arizona)

**U.S. District Court
FOOD
VISITS
EXERCISE
LENGTH OF
SEGREGATION
CONDITIONS OF
SEGREGATION**

Brooks v. Kleiman, 743 F.Supp. 350 (E.D. Pa. 1989). A prisoner brought a civil rights suit arising out of his incarceration in a restricted housing unit reserved for prisoners with disciplinary violations. The U.S. District Court found that the prisoner, who was incarcerated in a restrictive housing unit due to disciplinary violations, failed to show that his constitutional rights were violated by the method of delivery of food to prisoners cells, visitation restrictions, and exercise restrictions. The food for prisoners in the restrictive housing unit comes from the kitchen in large containers and at the end of the cellblock, trays are prepared and carried to each prisoner in his cell. A commissioned officer on each shift inspects the food distribution as to its sanitary conditions and proper handling. As the inmates have demonstrated an inability to comply with prison regulations, they receive visitors in a restricted area where they cannot touch the visitors due to a plexiglas partition between the prisoners and the visitors. The prisoners may have their right to two hours of exercise per day limited for proper purposes. It is impossible for all prisoners to receive two hours or more of exercise each day due to the constraints of the institution and of the ability of the prison personnel to handle the number of prisoners. It was also found that the addition period in the restricted housing unit was imposed for addition disciplinary violations. (Graterford Prison, Pennsylvania)

**U.S. Appeals Court
IMMUNITY
PLACEMENT IN
SEGREGATION
WITNESS
COUNSEL**

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. Prison officials did not violate the inmate's clearly established rights when they refused to permit the inmate to call various witnesses at disciplinary hearings, entitling them to qualified immunity in a civil rights action based on such refusal. Officials rejected the inmate's request because they believed that having one guard testify against another guard would undermine prison authority or because requested witnesses would give irrelevant or unnecessary testimony.

The court also found that the inmate did not have a clearly established right to be represented by a counsel substitute at the disciplinary proceeding, entitling the prison officials to qualified immunity based on their alleged denial of a counsel substitute. The inmate acted as a law clerk while incarcerated at the prison, and the conduct violations of which the inmate was charged were not complex. (Missouri Eastern Correctional Center)

**U.S. District Court
PUNISHMENT**

C.H. v. Sullivan, 718 F.Supp. 726 (D. Minn. 1989). Prisoners who were serving sentences under a federal witness security program brought action against the Attorney General and his agents, challenging double celling. The district court found that double celling was not cruel and unusual punishment despite the concern that double celling might result in the discovery of their identities by other inmates and threaten their security. The court also found that the use of a seniority system to determine which prisoners were double celled did not violate due process. Depriving prisoners serving sentences under a federal witness security program of seniority, and with it a single cell, for the violation of prison regulations did not so infringe upon the prisoners' safety as to constitute a violation of the fifth amendment. The seniority method was reasonably related to valid prison objectives of discipline and relief of overcrowding. The prisoners being disciplined were advised of charges and the facts supporting the charges and they were given a reasonable opportunity to call witnesses and present documentary evidence in their defense and an investigation was conducted to ensure that incompatible prisoners

were not housed together. The court is permitted to look at the challenged conditions of confinement alone or in combination to determine whether an eighth amendment violation has occurred; a particular prison policy may not directly be a violation, but may lead to conditions which do constitute punishment without a penological purpose. (Federal Correctional Institution, Sandstone, Minnesota)

U.S. District Court
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
DUE PROCESS
LENGTH OF
SEGREGATION
RULES

Coffman v. Trickey, 884 F.2d 1057 (8th Cir. 1989), cert. denied, 110 S.Ct. 1523. A prisoner brought an action alleging that a prison official violated his constitutional and statutory rights in imposing a punishment. The U.S. District Court entered a judgment in favor of the prison official and the prisoner appealed. The appeals court found that the prisoner was deprived of due process of law, that a statute prohibiting the confinement of inmates in the adjustment unit in excess of ten days was violated, and that although the prison officials did have qualified immunity as to the statutory violation they did not have qualified immunity as to the constitutional violation. According to the court, the prisoner was deprived of liberty without due process when he was punished by prison officials for violating a rule prohibiting violation of published rule without first receiving notification of which published rule he violated. The rules relied upon by prison authorities did not apply to the situation at hand. (Eastern Correctional Center, Pacific, Missouri)

U.S. District Court
DUE PROCESS
PROCEDURES

Czajka v. Moore, 708 F.Supp. 253 (E.D.Mo. 1989). A prisoner and his wife brought an action alleging that certain disciplinary measures were taken by prison officials without affording due process of law. The plaintiff sought a preliminary injunction. Following the denial of an injunction and reversal of that denial on appeal, the district court found that the prisoner and his wife were entitled to a preliminary injunction requiring prison officials to remove a stop order from the wife's visiting and releasing the inmate from the special adjustment unit. Actions were taken as a result of determination of misconduct involving sexual activity of the inmate and his wife in the prison's main visiting room, where the adjustment board which found the inmate guilty of a conduct violation included the prison official who had reported the alleged conduct violation. (Missouri Eastern Correctional Center)

U.S. Appeals Court
DUE PROCESS

Dunn v. White, 880 F.2d 1188 (10th Cir. 1989), cert. denied, 110 S.Ct. 871. A prisoner filed a Section 1983 action against prison officials, alleging that officials assaulted him and threatened to place him in disciplinary segregation when he refused to submit to a blood test for AIDS (Acquired Immune Deficiency Syndrome). The U.S. District Court dismissed the complaint, and the prisoner appealed. The appeals court found that the nonconsensual AIDS test did not violate the prisoner's first amendment or fourth amendment rights. The prison had a substantial interest in pursuing a program to treat those infected with the disease and in taking steps to prevent further transmission, and that interest outweighed the prisoner's limited expectation of privacy. In addition, the court also stated that the prisoner was not entitled to a due process hearing before being threatened with disciplinary segregation because of his refusal to submit to the test. (Conner Correctional Center, Oklahoma)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
ISOLATION

Earl v. Norris, 884 F.2d 362 (8th Cir. 1989). A state prisoner filed a civil rights action and the prison officials motioned for a summary judgment, which was granted by the U.S. District Court. On appeal, the appeals court found that "although they do not condone the carelessness shown by officials in this case," the negligent delay in releasing the inmate from punitive isolation after the reversal of a disciplinary conviction did not implicate the due process clause. (Maximum Security Unit, Tucker, Arkansas)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Giano v. Sullivan, 709 F.Supp. 1209 (S.D.N.Y. 1989). Based upon a finding in a disciplinary hearing that an inmate was guilty of escape from a prison facility, leaving an assigned area, and setting a fire, the inmate was to be confined in a special housing unit for a period of five years, with no phone, packages, or commissary privileges during the entire period. The inmate sought federal habeas corpus relief. The district court found that the inmate was denied his constitutional right to prepare a defense to charges against him, where the inmate was in a special confinement when he requested and was assigned an employee assistant. The assistant was either unwilling or unable to perform the specific tasks requested by the inmate and in fact provided no assistance whatsoever. Despite protests by the inmate that he was not prepared to proceed with the hearing, and several requests were unsuccessfully made for documentary evidence that the inmate had originally asked the assistant to secure, the hearing officer proceeded with the hearing and refused to turn over documents. It was also found by the court that the circumstances in which the inmate's disciplinary hearing on escape and other charges was conducted, combined with the hearing officer's participation in other escapees' hearings, created an unacceptable risk of unfairness, where both correction officers who testified against the inmate during the hearing remained in the hearing room throughout the entire course of the proceedings, at times interrupting the inmate when he sought to speak on his own behalf. (Ossining Correctional Facility)

U.S. Appeals Court
SOLITARY
CONFINEMENT

Harris v. Davis, 874 F.2d 461 (7th Cir. 1989), cert. denied, 110 S.Ct. 735. An inmate filed an action under Section 1983 against correctional officers, alleging that they subjected him to cruel and unusual punishment by forcing him to take an emetic and by denying him necessary medical assistance, while he was in deadlock. In addition, the inmate charged that officers violated his procedural due process rights by improperly consigning him to deadlock without a hearing. The U.S. District Court entered judgment on a jury verdict in favor of the defendants, and the inmate appealed. The appeals court affirmed and found that the erroneous admission of "other acts" evidence was harmless. References to the suggestive nature of photographs seized from the inmate were not admissible as evidence of other crimes, wrongs or acts in the inmate's civil rights action in which the inmate asserted a due process claim that the correctional officer consigned the inmate to deadlock without a hearing for conduct that allegedly posed a threat to the security of the institution. The officer's decision was based solely on the officer's determination that the inmate had swallowed contraband, and the presence of suggestive photographs was completely irrelevant. The references to a disciplinary ticket which the inmate received for possession of homemade moonshine in his cell were not admissible as evidence of other crimes, wrongs or acts. Although evidence that the inmate had swallowed homemade moonshine a week after taking an emetic to determine the presence of contraband might have provided an alternative explanation for his claimed injuries and thus might have been admissible on the issue of damages, the defendants never established that the inmate ingested any of the alcohol. (Menard Corr. Center, Illinois)

U.S. Appeals Court
DRUG TEST
DUE PROCESS

Higgs v. Bland, 888 F.2d 443 (6th Cir. 1989). Prison inmates sought a preliminary injunction against the use of enzyme multiplied immunoassay technique (EMIT) urine test results to punish them for use of drugs. The U.S. District Court issued an injunction and prison officials appealed. The court of appeals vacated and remanded. On remand, the district court denied injunction and denied attorney's fees, and the inmates appealed. The appeals court, affirming in part, vacating in part and remanding, found that the EMIT test provided sufficient evidence in support of disciplinary sanctions for prisoner drug use to satisfy due process requirements. The consent decree from a previous action did not require that the technician who administered the test be present at disciplinary hearings. The attorney's fees were not allowable under the civil rights statute, but the attorney's fees were allowable under the consent decree. Enzyme multiplied immunoassay test (EMIT) presence of drugs in urine was sufficiently reliable so as to constitute "some evidence" in support of the prison disciplinary sanctions imposed on prisoner found on the basis of test to have consumed drugs. (Kentucky State Penitentiary and Kentucky State Reformatory)

U.S. Appeals Court
CONDITIONS OF
SEGREGATION
DUE PROCESS
LENGTH OF
SEGREGATION

Knight v. Armontrout, 878 F.2d 1093 (8th Cir. 1989). According to a federal appeals court, state inmates were not denied due process when they were kept in a punitive detention section for 13 days more than the ten-day punitive detention they had been ordered to serve. The additional 13 days of detention had been caused by a lack of beds in the unit to which the inmates would have been transferred, and during the detention the inmates received

periodic and formal reviews that they would have received had they been transferred. The court stated that a denial of recreation for state inmates for a short period, per se, is not a violation of the eighth amendment. Because of the fact that the inmates were given substantially the same privileges in punitive detention that they would have received in administrative segregation, the court found that there was no due process violation. The inmates received a hearing before being placed in punitive detention, another hearing before their placement in administrative segregation, and during the thirteen day period received the informal periodic reviews which were mandated for those in administrative segregation. (Missouri State Penitentiary)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
POLYGRAPH
EVIDENCE

Linea v. Lane, 882 F.2d 1171 (7th Cir. 1989). An inmate filed a civil rights action after he had been found guilty in a prison disciplinary proceeding of aiding and abetting an escape. The district court found that the inmate had been found guilty without sufficient evidence and ordered the disciplinary action expunged from his record, and appeal was taken. The appeals court found that polygraph evidence is admissible in prison disciplinary proceedings; the polygraph evidence did not, without more, support a finding that the prisoner aided and abetted an escape. The prison officials were entitled to qualified immunity from liability; and reinstatement of the inmate to his prior work assignment was not necessary, but rather, the expunction of his record was sufficient to protect him from future prejudice in obtaining work assignments and transfers and reflected a reasonable balancing of equities and parties' respective interests. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
DUE PROCESS

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's 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)

State Supreme Court
DUE PROCESS
INFORMANTS

Nelson v. Coughlin, 538 N.Y.S.2d 360 (A.D. 1989). An inmate filed an Article 78 proceeding to review a determination of the Commissioner of Correctional Services finding an inmate guilty of violating a prison disciplinary rule. The State Supreme Court dismissed the application, and the inmate appealed. The State Supreme Court, Appellate Division reversed the judgment and granted a petition, finding that the hearing officer's failure to independently appraise the confidential informant's credibility violated the inmate's due process rights in the prison disciplinary proceeding. The inmate's completion of his term in involuntary protected custody did not moot the proceeding to annul a determination that he be placed in such custody, because the inmate was entitled to an accurately maintained disciplinary record. The inmate's due process rights are not infringed when, for safety reasons, a confidential informant's statements about an inmate are provided to a hearing officer by someone who interviewed the informant; however, there must be some basis in the record from which the hearing officer can make an independent assessment of the informant's credibility. (Department of Correctional Services, New York)

U.S. District Court
DRUG TEST
EVIDENCE

Pella v. Adams, 723 F.Supp. 1394 (D. Nev. 1989). An inmate brought a federal civil rights suit claiming that he was denied due process, as a result of his being denied the right to take an additional test at his own expense after the prison's use of an Enzyme Multiple Immunoassay Test (EMIT) found him guilty of the use of marijuana. He claimed that this prohibited him from collecting evidence that might exonerate him. The court found that after finding that the inmate tested positive for marijuana on the EMIT test, the prison had a legitimate penological interest in denying the inmate's request for an alternate test. An alternate test would involve the use of prison personnel and not every inmate would be able to afford them. Several difficulties would result from this. Would the additional administrative/ personnel costs involved in obtaining it be included in the costs of the alternative test? Since the inmate would be paying for it, who would decide which alternative test was used? And lastly, allowing "some inmates to avail themselves of the additional evidence but not others" might result in a situation in which the kind of hearing a person gets depends on the money he has. Summary judgment was entered for the defendants. (Northern Nevada Correctional Center)

State Supreme Court
DUE PROCESS
PROCEDURES
REGULATIONS
EVIDENCE

Petition of Anderson, 772 P.2d 510 (Wash. 1989), cert. denied, 110 S.Ct. 565. A prison inmate sought review of a disciplinary proceeding finding him guilty of the infraction of possession of a knife, which was found in a cell which the inmate shared with three other inmates. The finding was based on the application of a state prison regulation, known as the "cell tag" provision, which provided that each inmate of a multiple-inmate cell "will be held accountable for an infraction that occurs within the confines of such cell unless he/she can establish a lack of involvement in the infraction." The prisoner claimed that this regulation violated his due process right to a fundamentally fair proceeding. The Supreme Court of Washington disagreed. The effect of the regulation, the court noted, was to "create a rebuttable presumption of involvement of an inmate where an infraction occurs in his cell." While the sanction imposed--a loss of statutory good time credit--deprived the inmate of a liberty interest, there was no violation of due process. Due process is satisfied if a disciplinary determination is supported by "some evidence," the court noted. Since the knife was found in the cell, the court said, the inmate could be said to be in "constructive possession" of it--its presence in the cell was "some evidence" that any one of the four cellmates--or all of them--either possessed the knife, placed the knife in the cell or at least knew of its presence in the cell. If the prisoner could establish his lack of involvement, the court pointed out, he had a defense. Strong policy reasons exist for the "cell tag regulations," because of the serious problem that the existence of such contraband as knives poses for the prison setting. "Cell tag" regulations create group pressure that will help prevent contraband being kept in multi-inmate cells. "Without the regulation, multiple-inmate cells would become safe depositories for contraband, with individual culpability nearly impossible to prove." (Washington State Penitentiary)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
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 prejudice 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. District Court
DUE PROCESS
PLACEMENT IN
SEGREGATION
TRANSFER

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

U.S. District Court
DUE PROCESS
DRUG TEST

Ramey v. Hawk, 730 F.Supp. 1366 (E.D.N.C. 1989). A prison inmate filed an action challenging as unconstitutional a disciplinary action wherein he was found to have failed to provide a urine sample, and petitioned for habeas corpus. On a motion for summary judgment, the district court, allowing the motion and granting the summary judgment, found that the urine testing program, on its face and as applied, did not constitute an unreasonable search and seizure, did not violate due process, and did not constitute cruel and unusual punishment. The Bureau of Prisons regulations providing for urine testing of prisoners to deter and detect drug use were reasonably related to legitimate penological interests and thus did not violate a prohibition against unreasonable searches and seizures, right to due process, or prohibition against cruel and unusual punishment. The policy allowed the inmate to drink eight ounces of water after being requested to produce a urine specimen, allowed two hours in which to produce the specimen, and gave an opportunity at the hearing to rebut the presumption of unwillingness arising from the failure to produce a specimen within two hours. (Federal Correctional Institution, Butner, North Carolina)

State Appeals Court
INFORMANTS
PROCEDURES

Reed v. OSP, 773 P.2d 5 (Or.App. 1989). A prison inmate sought a review of an order finding that he attempted to engage in a sexual activity with another inmate. The appeals court, reversing and remanding, found that the hearings officer erred in failing to make findings of reliability of the confidential informant and of the facts supporting that conclusion. The court noted that, in Oregon, courts have required that hearing officers dealing with informants' statements must first determine whether an informant is a person who is reliable and secondly, determine whether the information provided in the particular case is truthful. (Oregon State Penitentiary)

U.S. Appeals Court
CLOTHING
DISCIPLINARY
PROCEDURES
DUE PROCESS
ISOLATION
WITNESS

Rodgers v. Thomas, 879 F.2d 380 (8th Cir. 1989). A state inmate brought a Section 1983 action against Arkansas Department of Correction officials. The U.S. District Court dismissed the complaint, and the inmate appealed. The appeals court affirmed, finding that the inmate was not deprived of due process in connection with disciplinary proceedings, and depriving the inmate in an isolation cell of all his clothing except his underwear pending the holding of a disciplinary proceeding, although unjustified, did not constitute cruel and unusual punishment under the eighth amendment. Other conditions of confinement were humane and sanitary and extent of pain and injury which the inmate suffered, if any, was minimal.

The lack of an opportunity for the state inmate to cross-examine a witness regarding his conversation with the inmate's mother did not support a due process claim where the disciplinary committee subsequently confirmed the mother's statement with follow-up telephone call. The state inmate's due process rights were not violated, although he did not have access to paper, pencil, or prison handbook in preparing for disciplinary charges. The inmate was not deprived of an opportunity to mount a defense because statements were obtained from his witnesses, and the inmate was allowed requisite 24 hours after notification of charges against him to prepare defense. The inmate was not punished prior to the disciplinary hearing by being confined to an isolation cell and, thus, his due process rights were not violated. The assignment to the isolation cell was the only option available to prison officials for the assignment of inmates under investigation for rules violations since the unit was a minimum security facility and there was no other secured housing location available. (Benton Work Release Center, Arkansas)

U.S. District Court
DRUG TEST

Rucker v. Johnson, 724 F.Supp. 568 (N.D. Ill. 1989). A state prisoner brought a civil rights suit against various prison employees, challenging the disciplinary actions taken against him based on charges of marijuana use. On motions of the defendants for summary judgment, the district court found that the eleventh amendment prevented any award of damages against the defendants in their official capacities. The officials were qualifiedly immune from damages in their individual capacities in imposing discipline based on urinalysis reports even if the inmate could prove that the tests were not as reliable as it had been found in prior reported cases. Officials were qualifiedly immune despite the failure to furnish the inmate with the urinalysis reports, in that there was no reasonable probability that providing the report would have changed the outcome of the hearing, but the disciplinary committees ordinarily should provide copies of such reports to prisoners being charged with drug use. (Sheridan Correctional Center, Illinois)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
EVIDENCE

Rudd v. Sargent, 866 F.2d 260 (8th Cir. 1989). A state prisoner brought a Section 1983 action alleging that prison officials subjected him to cruel and unusual punishment and denied him due process in disciplinary proceedings. The U.S. District Court entered a final judgment in favor of the defendants, and the prisoner appealed. The appeals court affirmed and found that the prisoner failed to show that he was denied due process in disciplinary proceedings in which he was charged with violating a provision prohibiting rape, sexual assault, and forced sexual acts. Statements in the prison official's written disciplinary report constituted "some evidence" to support the conclusion that the inmate violated the provision; although the official did not witness the violation and the victim's statements

might be considered inadmissible hearsay at a criminal trial. The full panoply of rights due a defendant in a criminal trial did not apply to a prison disciplinary proceeding. The court stated that due process in prison disciplinary hearings is satisfied if "some evidence--that is, any evidence in the record--supports the disciplinary decision." In this case, the statements in the written disciplinary report constituted "some evidence" to support the conclusion that the prisoner committed the rule violation. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
DISCIPLINARY
PROCEDURES
PLACEMENT IN
SEGREGATION
NOTICE

Sanders v. Borgert, 711 F.Supp. 889 (E.D.Mich. 1989), cert. denied, 110 S.Ct. 2182. A state prison inmate sought 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
DISCIPLINARY
PROCEDURES
RETALIATION

Sprouse v. Babcock, 870 F.2d 450 (8th Cir. 1989). An inmate brought a Section 1983 action against prison officials, claiming that his constitutional rights were violated by the deliberate filing of false disciplinary charges against him. The U.S. District Court entered a summary judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the filing of a disciplinary charge against the inmate, although otherwise not actionable under Section 1983, was actionable if done in retaliation for his having filed a grievance pursuant to established procedures. Prison officials cannot properly bring a disciplinary action against an inmate for filing a grievance that is determined by those officials to be without merit any more than they can properly bring a disciplinary action against an inmate for filing a lawsuit that is judicially determined to be without merit. The inmate filed an inmate grievance against a counselor for responding late to two previous requests. Two days later, the counselor wrote a disciplinary notice against the inmate for making false statements in the inmate grievance. After a hearing, the disciplinary committee found the inmate guilty of making false statements and imposed ten days of disciplinary detention, 90 days of administrative segregation and other sanctions. The discipline was later reversed because of a technical violation of the grievance procedure prohibiting employees involved in a grievance from participating in the disciplinary action. (Iowa State Penitentiary)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
DRUG TEST

Thompson v. Owens, 889 F.2d 500 (3rd Cir. 1989). A prisoner brought a civil class action alleging a deprivation of due process rights arising from the failure to prison officials to provide a complete chain of custody evidence regarding his urine sample at this misconduct hearing on drug violation charges. The U.S. District Court entered a judgment for the prison, and the prisoner appealed. The appeals court, affirming the decision, found that the prisoner's due process rights were not violated, as the urine test results, even with an incomplete chain of custody, constituted "some evidence" that the defendant had committed an offense and the due process clause did not require a higher standard of proof. The court noted, in rejecting the inmate's claim, that due process is satisfied in prison disciplinary proceedings as long as "some evidence" supports the decision of the hearing officer, citing Superintendent v. Hill, 472 U.S. 445, 105 S.Ct. 2768 (1985). Noting further that there was no allegation that the urine sample was tampered with, the court held that positive urinalysis results based on samples that officials claim to be the prisoner's constitute some evidence of his drug use. (State Correctional Institution, Rockview, Pennsylvania)

U.S. Appeals Court
LIBERTY
INTEREST
DUE PROCESS
SEGREGATION

Todaro v. Bowman, 872 F.2d 43 (3rd Cir. 1989). A pro se state prisoner brought a Section 1983 action arising out of his continued confinement in a holding cell in violation of the county prison policy. The inmate was placed in a cell in the basement of the facility, alternatively referred to as lockup, medical quarantine, drunk tank, and holding cell. In his pro se complaint, the plaintiff alleged that the warden of the county jail and another individual, without the benefit of a hearing, imposed a three-day punitive segregation upon him in retaliation for having written critical letters concerning prison conditions. The U.S. District Court adopted a magistrate's report and granted summary judgment to the defendants. On appeal, the court of appeals, reversing and remanding, found that genuine issues of material fact precluded summary judgment. Genuine issues of material fact, as to whether the state prisoner was kept from the general prison population as a punishment for letters complaining about prison conditions, precluded a summary judgment on the prisoner's pro se Section 1983 claim alleging the denial of first amendment rights. (Somerset County Jail, Pennsylvania)

U.S. District Court
DUE PROCESS
WITNESS
INFORMANT

Vasquez v. Coughlin, 726 F.Supp. 466 (S.D.N.Y. 1989). An inmate brought a civil rights action against prison officials, claiming due process violations in connection with a disciplinary hearing. On cross motions for summary judgment, the district court found that fact issues concerning the hearing officer's failure to call a victim as a witness or to independently assess the credibility of confidential informant precluded summary judgment. The hearing officer was not entitled to qualified immunity; but the supervisory officers could not be held liable on the respondeat superior theory. Evidence that a hearing officer failed to call a victim at the inmate's disciplinary hearing arising from a stabbing incident without determining whether the victim would be available to testify at a later date raised a fact issue as to whether the officer intentionally violated the inmate's due process rights, precluding summary judgment in the inmate's civil rights action. The fact issue as to whether a hearing officer independently determined the credibility of a confidential informant or the reliability of the informant's information prior to the prison disciplinary hearing, as required by due process, precluded summary judgment in the civil rights action brought by the inmate subject to discipline. The right to an independent assessment of the confidential informant's credibility in the prison disciplinary proceedings was a matter of established law at the time of the 1986 disciplinary hearing, for purposes of determining whether the hearing officer was entitled to qualified immunity defense in the inmate's civil rights action. (Sing Sing Correctional Facility, Ossining, New York)

U.S. Appeals Court
DUE PROCESS
PROCEDURES
SEGREGATION
EVIDENCE

Viens v. Daniels, 871 F.2d 1328 (7th Cir. 1989). Inmates who were disciplined for their alleged participation in an escape attempt filed a federal civil rights action against prison officials. The U.S. District Court dismissed for failure to exhaust state remedy, and the inmates appealed. The appeals court, affirming in part, reversing in part, and remanding, found that the district court should not have dismissed the inmates' procedural due process claims for failure to exhaust state remedy where the prisoners challenged the placement in disciplinary segregation for almost a year. Loss of privileges, not loss of good time credit, but the imposition of discipline, was supported by sufficient evidence. The prisoners who failed to exhaust state remedies were not barred from bringing a federal civil rights action challenging procedures used as a disciplinary hearing which resulted in the imposition of significant sanctions other than the revocation of good time, notwithstanding an argument that the exhaustion was required because the judgment for the inmates would act as a collateral estoppel in a later habeas corpus proceeding seeking the restoration of good time credits which had been revoked as discipline. The prisoners' rights to due process were satisfied in a prison disciplinary proceeding in which the prison disciplinary proceeding in which the adjustment committee's finding that they were guilty of participating in an escape attempt was supported by "some evidence"; another inmate's version of the incident was verified by polygraph. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
RETALIATION

Wildberger v. Bracknell, 869 F.2d 1467 (11th Cir. 1989). A prison inmate brought action challenging a grievance proceeding and segregated confinement. The U.S. District Court granted summary judgment in favor of the defendants, and the inmate appealed. The court of appeals, reversing and remanding, found that the inmate's allegation that he had been disciplined as a result of filing several grievances asserted a claim for punishment due to exercise of the first amendment right of freedom of speech and the right to petition the government for redress of grievances. He also challenged the fairness and impartiality of the disciplinary committee. (Alabama State Department of Corrections)

U.S. District Court
RETALIATION
GRIEVANCE

Williams v. Smith, 717 F.Supp. 523 (W.D. Mich. 1989). An inmate brought a civil rights action against prison officials. The district court found that the actions of the prison officials in citing an inmate for misconduct after he filed a grievance as a result of a particular incident did not violate his due process rights. A prisoner claiming in a civil rights action that he has been subject to retaliation for filing a grievance must prove far more than the lodging of a misconduct against him after he has exercised his first amendment right. He must also show that the prison official's conduct somehow transcended all bounds of reasonable behavior and so shocked the conscience. (Michigan)

U.S. District Court
SEGREGATION
DUE PROCESS

Willoughby v. Luster, 717 F.Supp. 1439 (D.Nev. 1989). A prison inmate filed a civil rights complaint against the warden and three members of a disciplinary committee. On the defendants' motion for summary judgment, the district court found that there was issue of fact, precluding a summary judgment, as to whether the inmate had been subjected to administrative or disciplinary detention prior to his disciplinary hearing. The right to a fair and impartial prison disciplinary hearing does not require that members of the disciplinary committee come from outside the prison, but prison inmates have a constitutional right to disciplinary committees that do not contain members who investigated or witnessed the alleged disciplinary violation. Although two members of the prison disciplinary committee asserted without contradiction that they did

not know that the third member had participated in the investigation, there was issue of fact, precluding summary judgment for the two members pursuant to their qualified immunity defense in the inmate's civil rights action, as to whether they reasonably should have known of the third member's involvement. (Southern Nevada Correctional Center)

U.S. District Court
WITNESS
DISCIPLINARY
PROCEDURES

Young v. Kihl, 720 F.Supp. 22 (W.D.N.Y. 1989). An inmate brought a civil rights action against prison officials, alleging that he was punished for misbehavior following disciplinary hearings at which he was denied an opportunity to be physically present during examination of witnesses on his behalf. On motions to dismiss, the district court found that the pleadings sufficed to implicate the Commissioner of the state Department of Corrections personally, and the inmate had a viable claim based on the right to call witnesses on his behalf, which included the right to be physically present when they testified, notwithstanding that he did not allege that the refusal to permit him to be present was without regard for institutional safety or correctional goals. While inmates may not have a right to be present during adverse testimony, none of the "inherent dangers" involved there are posed by an inmate's presence during the introduction of favorable testimony, the court reasoned. This right to be physically present may be overcome by prison officials who raise legitimate security reasons for preventing such presence. But it denied the prison officials' motion to dismiss, finding that any such security reasons for preventing physical presence of the prisoner were in the nature of affirmative defenses which could be raised at trial. (New York Department of Corrections)

1990

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
FOOD

Adams v. Kincheloe, 743 F.Supp. 1393 (E.D. Wash. 1990). A state inmate brought a civil rights action, alleging that the manner in which a restricted diet was served to him amounted to cruel and unusual punishment. The district court found that the manner in which the inmate's disciplinary diet was served - "nutra-loaf" was dropped through the "cuff door" on the inmate's cell and onto floor, without tray or utensils, while inmate was forced to stand at back of cell - did not amount to cruel and unusual punishment; the loaf was wrapped in at least four layers of plastic wrapping, having inmate stand at back of cell was rationally related to desire to avoid his previously disruptive behavior, and the fact that there was nothing pleasant or dignified about having food dropped on floor or eating without utensils or tray, did not rise to the level of an Eighth Amendment violation. (Intensive Management Unit, Washington)

U.S. Appeals Court
DUE PROCESS
INFORMANT

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

U.S. District Court
LENGTH OF
SEGREGATION
RULES
GOOD TIME

Bates v. Wright, 738 F.Supp. 386 (D. Ore. 1990). After receiving sufficient evidence supporting a hearing officers' conclusion that disciplinary rules were violated by a state prisoner, the federal district court denied a writ of habeas corpus action brought by the prisoner against the superintendent of the prison. It was found that disciplinary rules were violated by the prisoner when he kept in his possession until evening, asthma medicine he was required to take in the morning. He informed a guard that the prison nurse authorized him to do so. The court ruled that a three month extension of the segregation period for the medicine possession, seven days' extension for the misleading statement, and a recommendation that the parole date be extended 25% was justifiable in light of the need to discourage the prisoner and others from performing similar infractions. (Eastern Oregon Correctional Institution)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Benitez v. Wolff, 907 F.2d 1293 (2nd Cir. 1990). An inmate filed a pro se civil rights complaint alleging the violation of his due process rights in a disciplinary proceeding. Reversing and remanding the district court decision to dismiss, the court of appeals found that the allegation made by the inmate that he was served with copies of disciplinary reports 24 hours prior to a hearing but was then transferred to other cells and not allowed to take the reports with him states a colorable due process claim. The inmate did not argue that he was denied notice of the charges against him, but that not permitting him to keep the reports in his possession interfered with his ability to prepare for his defense. (Attica Correctional Facility, New York)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
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. A delay of more than six months by the prison authorities in providing the inmate with a rehearing of the disciplinary charges against him did not violate his due process rights. The delay was related to the inmate's transfer to another penitentiary as a result of other disciplinary sanctions. It was also found that the inmates' attempt to receive money for illegal or improper purposes was sufficiently supported by evidence exhibited in the disciplinary proceeding. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
DUE PROCESS
PUNISHMENT

Dixon v. Fox, 893 F.2d 1556 (8th Cir. 1990). Prisoners brought a civil rights action alleging the violation of due process in the removal for the prison "diet line." Unsubstantiated incident reports stating that they had violated the diet-line rules by missing a diet-line meal were the basis for removing them, without a hearing, from the prison "diet-line" for thirty days. The U.S. District Court dismissed the complaint and the prisoners appealed. The appeals court affirmed the lower court's decision, finding that the prisoners did not have a liberty interest in remaining on the diet line. The court stated that Nebraska statute and prison regulations to the effect that food restriction was not to be used as a disciplinary measure did not create a liberty interest in remaining on the prison's "diet-line." (Nebraska State Prison)

U.S. Appeals Court
EVIDENCE
DUE PROCESS
IMMUNITY

Engel v. Wendl, 921 F.2d 148 (8th Cir. 1990). A disciplined inmate brought a Section 1983 action against prison officials. The U.S. District Court denied the officials' motion for summary judgment based upon qualified immunity, and appeal was taken. The court of appeals, affirming the decision, found that the prison officials, who had no evidence to support the disciplinary action taken against the inmate, were not entitled to qualified immunity to the inmate's subsequent Section 1983 action alleging violation of due process. Because the specific and clearly established "some evidence" standard was in place in 1987 when the due process violations occurred, reasonable officials would have known that such conduct violated the inmate's due process rights. (Iowa Men's Reformatory)

U.S. Appeals Court
GOOD-TIME

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

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

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

U.S. Appeals Court
RULES
DISCIPLINARY
PROCEDURES

Gaston v. Taylor, 918 F.2d 25 (4th Cir. 1990). An inmate brought a Section 1983 action, challenging his conviction of violating a prison regulation prohibiting the possession of contraband. The U.S. District Court entered summary judgment against the inmate, and the inmate appealed. The court of appeals found that triable issues existed as to whether the inmate received an adequate notice that his conduct was prohibited and whether the warden and regional administrator were deliberately indifferent in reviewing the inmate's case. Such action of indifference supported a claim under Section 1983. (James River Correctional Center, Virginia)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
GOOD TIME
DRUG TEST

Harrison v. Dahm, 911 F.2d 37 (8th Cir. 1990). An inmate brought a Section 1983 action after a prison disciplinary committee found him guilty of drug abuse and penalized him with room restriction and loss of good time. The U.S. District Court dismissed the action on grounds of governmental immunity, and the inmate appealed. The appeals court found that the law was not fully established that the conduct of the disciplinary committee in failing to give the inmate written notice of the test results prior to the disciplinary hearing, failing to provide him with a copy of the results or letting him view the evidence log at the hearing, and failing to administer a second, corroborative drug test, violated the inmate's right to due process. Thus, the members of the disciplinary committee were entitled to qualified immunity. An inmate is only entitled to advance written notice of an alleged disciplinary violation and is not entitled to written notice of drug test results. It was also found that some deference was due to the disciplinary committee's claims that actions in failing to provide a copy of the test results and refusing to allow view of the log were dictated by administrative necessity, and thus, the conduct did not violate the defendant's due process rights; and the single, uncorroborated drug test established some evidence of drug use sufficient to satisfy due process. (Lincoln Correctional Center, Nebraska)

U.S. District Court
DRUG TEST

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. Appeals Court
RELIGION
FOOD

Hunafa v. Murphy, 907 F.2d 46 (7th Cir. 1990). A Muslim inmate brought a Section 1983 action against prison officers and claimed that prison policies regarding the service of meals containing pork to inmates in disciplinary segregation violated his free exercise rights. The prison serves pork two or three days a week to inmates who are in disciplinary segregation. Eating pork is contrary to the tenets of Islam (as of orthodox Judaism). The prison does not serve special meals to Muslim inmates who are in segregation, however; instead, whenever it serves pork, it serves along with it a non-pork substitute of soup and bread. The meals are served in the prisoners' cells on plastic trays that are divided into compartments, with pork and potatoes in one compartment and the soup and the bread in two of the other compartments. The defendants candidly admitted, however that "while the trays are in transit, there is no guarantee that some of these food items may not run together. We do take precautions so that it does not happen, but it could happen." Fearing the contamination of the non-pork products by the pork products, the prisoner refused to eat any of the meals at which pork is served. The U.S. District Court granted summary judgment and dismissed the action and the inmate appealed. The appeals court, reversing and remanding, found that the fact issues precluded a summary judgment, and the determination of whether officers were entitled to immunity from damages liability did not have to be made until a more complete record was developed. (Wisconsin State Prison)

U.S. District Court
PLACEMENT IN
SEGREGATION
DRUG TEST

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
PROCEDURES
DISCIPLINARY
PROCEDURES

Lott v. Selsky, 747 F.Supp. 226 (S.D.N.Y. 1990), affirmed, 932 F.2d 957. An inmate sued various prison officials, claiming that the officials violated his constitutional rights at a hearing on charges against the inmate arising from an assault committed upon another inmate. The officials moved for summary judgment. The district court found that the hearing had procedural constitutional safeguards to ensure him of a fair and unbiased hearing; the hearing was recorded electronically, the inmate had a right to call witnesses, introduce documentary evidence, and review written reports accusing him of charges, an in camera hearing was conducted to question the prison employee concerning reliability and credibility of her confidential sources which was the basis of her investigation and the inmate was entitled to introduce documentary evidence. The court also found that the inmate was not denied a fair hearing on charges against him on the grounds that the prison official who conducted the hearing was biased; the official allowed the inmate ample opportunity to introduce oral and documentary evidence, and the inmate's claim that the official prejudged the case was unsubstantiated. (Green Haven Correctional Facility, New York)

U.S. District Court
DUE PROCESS
PUNISHMENT

McMillan v. Healey, 739 F.Supp. 153 (S.D.N.Y. 1990). A prisoner brought a civil rights action claiming violation of his due process rights by prison officials as a result of the failure to notify him of the range of disciplinary sanctions applicable to the misconduct with which the prisoner was charged. The district court found that the failure to notify the inmate, after he had been charged with misconduct, of the potential penalties that could be imposed for that misconduct violated the due process clause of the fourteenth amendment, and the prison officials were entitled to qualified immunity from liability for the violation of the prisoner's due process rights where the plaintiff's right to notice was not clearly established at the time the officials acted. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
EVIDENCE

Mason v. Sargent, 898 F.2d 679 (8th Cir. 1990). An inmate filed a civil rights action challenging a disciplinary decision. The U.S. District Court dismissed the complaint, and the inmate appealed. The appeals court affirmed the decision, finding that some evidence supported the prison disciplinary committee's finding that the inmate possessed contraband pajamas made from altered bed linens and prison clothing, even though the inmate claimed that another inmate had admitted placing the altered sheets and clothing in the locker shared by both inmates. The disciplinary committee found him guilty of three of the four charges, placed him on thirty days' restriction, ordered him to make \$27.28 restitution for damaged prison property, and reduced his status from class one to class three. (Cummins Unit, Arkansas Department of Corrections)

State Appeals Court
WITNESS
DISCIPLINARY
PROCEDURES
POLYGRAPH
EVIDENCE

Matter of Plunkett, 788 P.2d 1090 (Wash.App. 1990). An inmate petitioned for relief from a personal restraint imposed pursuant to a prison disciplinary hearing in which he was found guilty of raping a fellow inmate. The appeals court denied the petition and found that conducting a hearing during which the alleged victim and staff witnesses testified by telephone from another prison did not violate prison regulations. The telephonic hearing did not violate the inmate's due process rights; and the inmate waived an objection to the admissibility of polygraph evidence by failing to raise an issue at the disciplinary hearing. A prison regulation requires that an inmate be present at "all stages of the hearing" except for decisional deliberations and inquiries concerning unidentified witnesses. The regulation also requires that "every effort shall be made" to have staff member witnesses "present to testify at hearing." The latter regulation refers to having the prison staff witnesses testify orally rather than by written statement, and the word "present" as used in the regulation, does not mean "in person." If a telephonic hearing is used in a prison discipline case, the inmate ordinarily should have the same opportunity to hear the testimony as does the hearing officer. Only then can the prisoner be assured of having an opportunity to give responsive testimony in his or her own defense. (Washington Correctional Facility, Monroe)

U.S. Appeals Court
DUE PROCESS
REGULATIONS
PUNISHMENT

Meis v. Gunter, 906 F.2d 364 (8th Cir. 1990). An inmate at the Nebraska State Penitentiary brought a civil rights action for money damages and injunctive relief. The U.S. District Court determined that the inmate's constitutional rights had been violated and that the inmates were entitled to access to some, not all, institutional documents. On appeal and cross-appeal, the appeals court found that the inmate failed to show that he himself had actually been injured or was likely to be injured by the lack of access to prison documents containing inmate conduct standards and thus lacked a standing to make a due process argument regarding the lack of such access. The inmate did not have a constitutional right to documents setting out programs and opportunities available to inmates and criteria for their eligibility. A Nebraska statute requiring the posting at conspicuous places throughout the institution of rules and policies concerning inmate rights and developmental opportunities, work or education programs, and complaint procedures did not create a liberty interest for federal constitutional purposes. Where Administrative Regulations,

Operational Memoranda, or "Now Hear This" memoranda were used at "direct written orders" within the meaning of the inmate handbook for the Nebraska State Penitentiary, due process required that the inmates be provided with those regulations or memoranda in advance of claimed violation in order to be subjected to disciplinary proceedings. (Nebraska State Penitentiary)

U.S. Appeals Court
EQUAL
PROTECTION
PLACEMENT IN
SEGREGATION
REFUSAL TO
WORK

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
TRANSFER

Ortiz Gonzalez v. Otero De Ramos, 737 F.Supp. 9 (D. Puerto Rico 1990). A prisoner brought an action against officials in the correctional administration of the Puerto Rico penal system, claiming that his transfer from one facility to another deprived him of civil rights in violation of Section 1983 and the fourteenth amendment of the constitution. The defendants moved for a dismissal. The district court denied the motion, finding that the prisoner's due process liberty interests were implicated by the transfer from one facility to another. Although authorities contended that the prisoner has no interest to remain at the facility of his choice, the transfer in question was apparently disciplinary in nature, and regulations required a pre or posttransfer hearing to investigate the incident leading to the transfer. Regulations governing the administrative decisions within the Puerto Rico penal system grant prisoners an expectation that they will be given some procedure to investigate an allegedly improper transfer. (El Zarzal Camp, Puerto Rico)

U.S. District Court
DUE PROCESS
WITNESS

Owens v. Libhart, 729 F.Supp. 1510 (M.D. Pa. 1990), affirmed, 925 F.2d 419. A state prisoner filed a civil rights lawsuit claiming that his due process rights were abridged when a disciplinary hearing officer refused his request to call the prison's examining nurse as a witness. The nurse's written report of her medical examination of the prisoner was introduced in the prison's case against the inmate. The inmate stated that he had the right, under a state administrative procedure, to confront and cross-examine "any witness at a prison disciplinary hearing." He also argued that it was improper to deny this request without first determining whether it would be "unduly hazardous to institutional safety." The U.S. District Court rejected both these arguments. It noted that, while inmates have a due process right to call witnesses in their defense, confrontation and cross-examination are not generally required in the context of prison disciplinary proceedings. The court was also concerned that subjecting the nurse to cross examination and impeachment might inhibit her from making "objective medical analyses in subsequent hearings and medical reports," because of the possible intimidation by inmates. (Pennsylvania)

U.S. Appeals Court
DUE PROCESS
WITNESS

Patterson v. Coughlin, 905 F.2d 564 (2nd Cir. 1990). An inmate brought a civil rights action challenging confinement in a special housing unit. The U.S. District Court dismissed the action, and the inmate appealed. The appeals court reversed and remanded. On remand, the district court granted summary judgment for the inmate and the prison officials appealed. The court of appeals, affirming in part, and vacating and remanding in part, found that the burden had shifted to the state to show that even if the inmate had not been denied his due process right to have witnesses heard in his behalf, the inmate would have been found guilty of assault and confined to a special housing unit. The genuine issue of material fact, precluding entry of a summary judgment for the inmate, existed as to the amount of damages; and the state was entitled to a trial by jury. After an alleged assault upon a corrections officer who was attempting to break up a fight between two inmates, the plaintiff prisoner was confined in a special housing unit. He requested, at his disciplinary hearing, that the two inmates be called as witnesses. The hearing officer, stating that one was on visit and therefore unavailable and that he had previously heard the other inmate's version of the incident in his own disciplinary hearing, refused to call either one of them.

The prison officials' violation of the inmate's due process rights, which occurred when the inmate was found guilty and placed in a special housing unit without allowing him to call witnesses at his disciplinary hearing did not automatically entitle the inmate to more than nominal damages. The inmate's confinement in the unit would have to be considered justified deprivation of liberty, not deprivation caused by the state's failure to permit him to call those witnesses, if the inmate would have been found guilty of assault and confined to the unit even if his witnesses has been called. (Special Housing Unit, Attica Correctional Facility, New York)

U.S. District Court
DUE PROCESS
PROCEDURES

Proffitt v. U.S., 758 F.Supp. 342 (E.D. Va. 1990). A prisoner sued a prison and prison officials with respect to alleged mistreatment. The district court found that prison disciplinary procedure did not violate the prisoner's due process rights, even though a single individual and not a committee was the decision-making entity at the disciplinary hearing, and subsequent levels of appeal and review. (Federal Correctional Institute, Petersburg, Virginia)

U.S. District Court
LIBERTY
INTEREST
EVIDENCE

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)

U.S. Appeals Court
DUE PROCESS
WITNESS

Smith v. Maschner, 899 F.2d 940 (10th Cir. 1990). An inmate filed a civil rights action claiming that prison officials interfered with his mail and that he was denied procedural due process in disciplinary hearings. The appeals court found that the prison regulation of incoming correspondence did not violate any protected rights; and factual issues existed on the inmate's claim that he was deprived of procedural due process by virtue of the denial of a request to call a witness. An inmates' right to marshal their defenses by calling witnesses at disciplinary hearings is limited by special requirements of the prison setting and, thus, the right to confront and cross-examine witnesses is committed to the sound discretion of prison officials. Genuine issues of material fact existed, precluding summary judgment, on whether the inmate was denied procedural due process at a disciplinary hearing by the refusal to allow the inmate to call the prison's deputy director to rebut the testimony of a witness who had testified that the inmate showed disrespect toward the deputy director. (Kansas Prison)

U.S. Appeals Court
EVIDENCE
INFORMANTS

Wagner v. Henman, 902 F.2d 578 (7th Cir. 1990). An inmate filed a lawsuit seeking judicial review of a finding, after being found guilty of murdering a fellow inmate. In making the decision, the prison disciplinary committee had relied in part upon confidential information received from three informants. As a result of the finding, the prisoner lost 176 days of good time and also was placed in disciplinary segregation for 60 days. In the court proceeding, his attorney sought disclosure of documents containing statements made by the confidential informants. The federal magistrate ordered the total disclosure to the attorney of an FBI report containing their statements and their names. The attorney was only to be allowed, however, to inspect this report at the courthouse and to make notes to use for argument there. A marshal was to collect these notes for prompt destruction after the attorney's presentation of his argument to the court. The magistrate also ruled that the prisoner could not be present during either the inspection of the report or his attorney's argument to the court. The U.S. Court of Appeals found that, even under these circumstances, the magistrate erred in ordering the disclosure of the entire report. While the possibility of "intentional disclosure" of the informant's names by the inmate's attorney was "negligible in this case," the magistrate should have considered the risk of "inadvertent disclosure" and made full use of procedures such as redaction to "fashion an appropriate compromise between the inmate's right to effective assistance of counsel and the necessity of protecting informant anonymity." Because the magistrate did not make specific written findings regarding the consideration of such factors, the appeals court remanded for him to do so before any portion of the report was released to the inmate's attorney. (U.S. Penitentiary, Marion, Illinois)

U.S. District Court
PLACEMENT IN
SEGREGATION

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. (Rikers Island Facility, New York)

U.S. Appeals Court
SOLITARY
CONFINEMENT
FOOD
DISCIPLINARY
PROCEDURES

Woods v. Thieret, 903 F.2d 1080 (7th Cir. 1990). A prison inmate filed a pro se civil rights complaint against Department of Corrections employees for their alleged violation of civil rights in temporarily confining him to a cell on three separate occasions. He also complained that he was not fed for three days during one of the lockdowns. The U.S. District Court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court, affirming in part, and remanding in part, found that the material question of fact, as to whether the inmate had been confined to a cell for three days without food, precluded entry of summary judgment on the inmate's eighth amendment claim, but the provision of the State Administrative Code requiring prison officials to consider three factors prior to deciding to place the inmate in temporary confinement did not confer on the inmate any "liberty interest" in remaining in the general prison population, such as would be protected by due process. (Menard Correctional Institution, Illinois)

1991

U.S. Appeals Court
EVIDENCE
DISCIPLINARY
PROCEDURES

Campbell v. Henman, 931 F.2d 1212 (7th Cir. 1991). Inmates petitioned for habeas corpus relief alleging that they were denied the right to due process because prison officials withheld exculpatory information during a prison disciplinary proceeding. The U.S. District Court denied the petition on the grounds that the inmates were not entitled to a prehearing disclosure of exculpatory evidence, even if it existed, because they failed to request assistance of a staff representative during the hearing; the inmates appealed. The court of appeals, reversing and remanding, found that minimum due process required that the district court conduct an in camera review of the entire investigatory file, not only material relied on to find guilt, to determine whether or not exculpatory information existed, and it also found that the inmates did not waive their opportunity to receive exculpatory information merely because they exercised their option not to have assistance of a staff representative. (United States Penitentiary, Marion, Illinois)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Dotson v. Maschner, 764 F.Supp. 163 (D. Kan. 1991). A prison inmate brought a civil rights action seeking declaratory relief and damages. On the defendants' motion for summary judgment, the district court found that the disciplinary reports against the prisoner were not deliberately excessive where during the first year the prisoner received 12 reports and entered a plea of guilty in seven of them, was found guilty in four others after a full hearing and was found guilty of the last charge in one hearing, and in the second year received three reports and entered a guilty plea in two and was found guilty of the third after a full hearing. It was also found that the administrative proceedings conducted on the disciplinary reports complied with due process and with state administrative regulations; the prisoner received a notice of the charges no less than 24 hours before the hearing and was permitted to present evidence and witnesses in his defense and to receive a written statement of the evidence relied upon and reasons for the disciplinary action and his record contained documentation of the disciplinary record. (Lansing Correctional Facility, Lansing, Kansas)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Duenas v. Nagle, 765 F.Supp. 1393 (W.D. Wis. 1991). A prisoner brought a civil rights action alleging violations of his procedural due process and Eighth Amendment rights in connection with prison disciplinary hearings. Prison officials filed a motion to dismiss. The district court found that the prison officials' alleged noncompliance with established state procedures for disciplinary proceedings constituted random and unauthorized acts for which there was adequate postdeprivation remedy, and therefore such noncompliance did not give rise to a procedural due claim under the federal civil rights statute. It was also found that the prisoner failed to adequately allege that prison officials' alleged noncompliance with established state procedures for prison disciplinary proceedings violated the prisoner's Eighth Amendment right to be free from cruel and unusual punishment, where the prisoner, beyond asserting that he had suffered, did not allege any specific facts that would support a finding that his confinement was of a type forbidden by the Eighth Amendment. (Columbia Correctional Institution, Portage, Wisconsin)

U.S. Appeals Court
DISCIPLINE
LIBERTY INTEREST
DUE PROCESS
PLACEMENT IN
SEGREGATION

Gilbert v. Frazier, 931 F.2d 1581 (7th Cir. 1991). A state prisoner brought a civil rights action against the Illinois prison system alleging a violation of his rights as a result of his being segregated without a preliminary hearing. The U.S. District Court found no civil rights violations, and the prisoner appealed. The court of appeals found that the prisoner's due process rights were violated by the failure of the officials to conduct a preliminary hearing before temporarily placing the prisoner in disciplinary segregation. A hearing conducted after segregation was not sufficient to meet due process requirements. The court did acknowledge that prison authorities could place a prisoner in segregation before a hearing for "administrative" rather than disciplinary reasons, "such as when his safety or that of other prisoners or the guards so requires." In such instances, a postdeprivation hearing would suffice. (Illinois State Prison)

U.S. District Court
DUE PROCESS
EVIDENCE
DISCIPLINARY
PROCEDURES

Griffin v. Spratt, 768 F.Supp. 153 (E.D. Pa. 1991), reversed, 969 F.2d 16. A state prisoner filed suit claiming that he was placed in disciplinary custody in violation of due process. The district court found that it was a violation of due process to fail to preserve until a hearing the beverage which was the basis of the charge of possession or consumption of a fermented beverage, and to find the prisoner guilty based solely on the testimony of a prison guard. Due process requires that evidence critical to establishing a prisoner's guilt be preserved until a disciplinary hearing or at least until evidence is laboratory tested. The prison guard and the hearing examiner were jointly and severally liable for damages suffered by the prisoner when the guard intentionally ordered the prisoner to destroy the liquid used as a basis for the charge. On appeal, the court reversed the lower court ruling, finding that due process had not been violated unless evidence could show that the beverages were discarded in bad faith. (State Correctional Institution, Graterford, Pennsylvania)

State Court
DRUG TEST
INFORMANTS

Grochulski v. Kuhlmann, 575 N.Y.S.2d 722 (A.D. 1991). Three inmates filed a lawsuit challenging disciplinary determinations and the drug testing upon which they were based after they were found guilty of using drugs following separate disciplinary hearings. The charges stemmed from information allegedly supplied by a confidential inmate informant, which resulted in the inmates being directed to submit urine samples for a drug test. The tests were based on a prison regulation giving the correctional staff discretion to order drug tests when they receive information from "a source that the inmate is currently under the influence or had recently used illicit drugs." As a result, two of the inmates tested positive for marijuana and the third tested positive for cocaine. The inmates argued that the regulation was unconstitutional because it failed to require that the information received concerning purported inmate drug use be reliable before triggering a drug testing requirement. However, the state court found that "the challenged determinations were not based on an anonymous tip but on the positive results of the drug test." Since the determination of guilt was not dependent on the credibility of the confidential informant, there was no requirement of independent confirmation of the informant's reliability. (New York)

U.S. District Court
DUE PROCESS
EQUAL PROTECTION
GOOD TIME

Hamilton v. Scott, 762 F.Supp. 794 (N.D. Ill. 1991). An inmate sued a former director of the Illinois Department of Corrections, a warden at the prison, and three other Department officials for their alleged violation of his equal protection and due process rights in connection with revocation of his good-time credits. The district court found that where the inmate had a right to due process at the hearing that took away his good-time credits, the prison disciplinary committee's failure to call as witnesses the officers who had participated in the shake-down in which the contraband was discovered did not violate the inmate's due process rights, where the inmate himself had an opportunity to call the officers as witnesses and failed to do so. The prison officials failure to test weapons discovered in the inmate's cell for fingerprints did not violate the inmate's due process rights, where the fingerprint testing would at most have shown the absence of the inmate's fingerprints on weapons and would not have directly undercut the evidence presented at the proceeding to revoke the inmate's good-time credits. It was also found that the prison authorities' decision to seek revocation of the inmate's good-time credits when contraband was discovered in the cell, while not seeking revocation of good-time credits of inmates in an adjoining cell who allegedly had equal access to the contraband, did not violate the first inmate's equal protection rights, where the case against the first inmate was decided on its own merits. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

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. District Court
ASSISTANCE
DUE PROCESS

Horne v. Coughlin, 795 F.Supp. 72 (N.D.N.Y. 1991). An inmate who was allegedly denied due process at a prison disciplinary hearing brought a civil rights action against prison officials. On the officials' motions for summary judgment, the district court found that the officials were sufficiently personally involved in the alleged due process violation to be held liable under the civil rights statute. The Commissioner of the New York State Department of Correctional Services (DOCS), by ratifying or condoning a challenged counsel substitution policy used in a prison disciplinary hearing, was sufficiently personally involved to be held liable to the inmate under Section 1983 for due process

deprivation allegedly caused by the policy. In addition, the prison superintendent was personally involved in causing due process deprivations at the hearing arising when the retarded inmate was not provided with a counsel substitute, permitting him to be held liable to the inmate in the civil rights action. The superintendent knew of the inmate's retarded condition and had knowledge of proceedings against the inmate and his subsequent confinement without correcting the alleged constitutional infirmity. (Eastern Correctional Facility, Napanoch, New York)

U.S. District Court
CONDITIONS OF
SEGREGATION
DUE PROCESS
LENGTH OF
SEGREGATION

Howard v. Wilkerson, 768 F.Supp. 1002 (S.D.N.Y. 1991). An inmate brought a Section 1983 action against prison officials alleging due process and equal protection violations stemming from disciplinary proceedings. The inmate moved for partial summary judgment. The district court found that holding the inmate in keeplock confinement for eight days prior to the superintendent's disciplinary hearing in violation of New York regulations requiring that a hearing be held, absent exigent circumstances, within seven days of the inmate's initial confinement, did not amount to a constitutional violation redressable under Section 1983. However, genuine issues of material fact existed as to whether the inmate voluntarily waived his appearance before the disciplinary hearing when corrections officers approached him at an unusual time of night and used a term no longer in official use to refer to the "superintendent's" hearings and the inmate refused to attend the hearing or whether the inmate's refusal to attend the hearing occurred through the fault of the prison officials in failing to adequately explain the procedure, precluding summary judgment. In addition, it was found that prison officials violated the inmate's due process rights at the disciplinary hearing held in his absence in relying solely upon another inmate's hearsay identification of the inmate contained in the misbehavior report to find the inmate guilty of assault. (Sing Sing Correctional Facility, New York)

U.S. District Court
RETALIATION

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 an inmate could not establish that the discipline he received was in retaliation for filing of the lawsuit. The acts of which he complains did not amount to harassment but rather were well within the bounds of necessary discipline and security precautions considering his own past record in the institution and the factual scenario of this case. (State Correctional Institution, Pittsburgh, Pennsylvania)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
LENGTH OF
SEGREGATION

Jermosen v. Smith, 945 F.2d 547 (2nd Cir. 1991), cert. denied, 112 S.Ct. 1565. An inmate brought an action against prison officials alleging he was subjected to one week of keeplock without procedural protections guaranteed by the due process clause. The U.S. District Court entered judgment, granting in part and denying in part the plaintiff's motion for judgment, and appeal and cross appeal was taken. The court of appeals found that, at the time of the disciplinary hearing, procedural protections that apply to disciplinary proceedings had not been clearly established, and as prison officials did not violate the inmate's "clearly established" rights, they were entitled to assert a defense of qualified immunity. (Attica Correctional Facility, New York)

U.S. Appeals Court
WITNESS

Kingsley v. Bureau of Prisons, 937 F.2d 26 (2nd Cir. 1991). A federal prisoner petitioned for a writ of habeas corpus and sought damages. The U.S. District Court dismissed the suit, and appeal was taken. The court of appeals, affirming in part and reversing in part, found that the disciplinary hearing officer's determination that the inmate had waived his request for witnesses due to his inability to identify the other prisoners by name was arbitrary; the need for witnesses was especially compelling in the disciplinary proceeding for failure to provide a urine specimen, the prisoners' identities were readily available to prison officials, and the inmate's inability to identify them by name was understandable in view of his arrival at the prison only five days before the incident at issue. The court also found that the officer's order that the inmate apply ice to his testicles, in an alleged attempt to assist the inmate in providing the required urine sample, did not constitute cruel and unusual punishment such as would support action for damages; no harm was inflicted, and the inmate's allegation, at most, indicated minor and fleeting pain. (Federal Correctional Institution, Otisville, New York)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
EVIDENCE
WITNESS

Locher v. Plageman, 765 F.Supp. 1260 (W.D. Va. 1991). An inmate brought a Section 1983 action challenging convictions for possession of contraband and a sharpened instrument. The defendants moved for summary judgment. The district court found that the failure to produce the contraband (sugar) and its container at the prison disciplinary hearing did not deprive the inmate of due process, even though the inmate denied the existence of the sugar and container, as the existence of the contraband was found to be based on the credibility of witnesses at the hearing, and no laboratory analysis was required to determine if the substance was sugar. In addition, the inmate had no due

process right to a copy of the statements by prosecution witnesses against the inmate in the disciplinary proceeding. It was also found that the inmate's Section 1983 claim to challenge prison convictions for possessing a sharpened instrument and magazine should have initially been brought as a habeas corpus case for which exhaustion of state remedies was required as the core of the claims concerned the duration of the sentence, although the inmate sought monetary damages and injunctive relief. (Patrick Henry Correctional Unit, Virginia)

U.S. Appeals Court
DUE PROCESS
DISCIPLINARY
PROCEDURES
WITNESS

Moran v. Farrier, 924 F.2d 134 (8th Cir. 1991). Following remand, the U.S. District Court entered judgment in favor of an inmate in the inmate's action against prison officials based on an alleged due process violation at disciplinary proceedings, and officials appealed. The court of appeals found that prison officials violated the inmate's due process right at the disciplinary hearing by failing to call a witness requested by the inmate as required by prison regulations and basing the disciplinary decision on an incomplete record. Evidence that the inmate spent ten days in disciplinary detention and 23 days in administrative segregation, and lost his prison job as a result of the due process violation at the prison disciplinary hearing was sufficient to support an award of \$250 in damages. (Iowa State Penitentiary)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST
PROCEDURES

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
DISCIPLINE
RETALIATION

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
DISCIPLINARY
PROCEDURES
DUE PROCESS
WITNESS

Ramer v. Kerby, 936 F.2d 1102 (10th Cir. 1991). An inmate's petition for writ of habeas corpus was denied by the U.S. District Court, and the inmate appealed. The court of appeals found that a prison policy prohibiting prisoners from calling staff members as witnesses in disciplinary proceedings deprived the inmate of due process in those proceedings. However, the inmate's due process rights were not violated, as the disciplinary committee's decision not to consider staff members' testimony rested on the prisoner's refusal to submit written questions, not on the policy prohibiting testimony by staff members, and the inmate was not entitled to a new hearing. In addition, where the inmate was charged with a major report, the fact that the conduct at issue in the disciplinary proceeding--battery of a peace officer--was also defined as a criminal offense by New Mexico statutes did not mean that the disciplinary committee charged and convicted him under criminal felony law, and thus, the disciplinary committee's interpretation of that statute was immaterial. (New Mexico Correctional Facility, Los Lunas, New Mexico)

U.S. District Court
DUE PROCESS
RULES
IMMUNITY

Richardson v. Coughlin, 763 F.Supp. 1228 (S.D.N.Y. 1991). A New York state prison inmate brought an action against state corrections officials under the federal civil rights statute, claiming they violated his due process and First Amendment rights by seizing papers, including a petition, from his cell and punishing him under prison disciplinary rules for circulating the petition without authorization. The inmate moved for partial summary judgment and the defendant officials cross-moved for summary judgment. The district court found that punishing the inmate for acquiring signatures on a petition reciting grievances violated due process, where the inmate was not on notice that acquiring signatures on such a petition was prohibited, as no prison rule prohibited acquiring signatures or circulating petitions without the express authorization of officials. Genuine issues of material fact existed as to whether part of the inmate's punishment arising from the petition was based on a reasonable belief that the petition advocated a prison strike and therefore violated a prison rule and as to what extent penalty resulted from the language of the petition and to what extent penalty impermissibly resulted from the mistaken belief that circulation of petitions without authorization was prohibited, so as to preclude summary judgment on the extent to which state corrections officials were entitled to qualified immunity from damages. It should have been obvious to the disciplinary hearing officer that punishing the inmate for circulating a petition without authorization violated a constitutional due process requirement that prior notice be given that the conduct was prohibited before sanctions were imposed. The court also found that state corrections officials had qualified immunity as no case had been cited that at the time of the incident that the First Amendment barred prison officials from regulating circulation through a prison of a petition with the language such as that included in the inmate's petition. (Attica Correctional Facility and Sullivan Correctional Facility, New York)

U.S. District Court
INFORMANTS
WITNESS
DISCIPLINARY
PROCEDURES

Russell v. Coughlin, 774 F.Supp. 189 (S.D.N.Y. 1991), reversed, 15 F.3d 219. A state prisoner brought a Section 1983 action against various prison officials. The district court found that material issues of fact, precluding summary judgment on behalf of one state prison official existed as to whether the official's denial of the inmate's request to call correctional officers as witnesses in the Tier III hearing on charges of assault against another inmate denied the inmate his constitutional rights as there was no indication in the record as to why the official failed to call witnesses. In addition, material issues of fact, precluding summary judgment, existed as to whether the state prison official presiding over the inmate's hearing violated the inmate's constitutional rights by failing to conduct an on camera hearing to assess the credibility of the confidential informant upon whose statements the charges were based. There was evidence that the official had simply asked the prison guard making the charges whether in her estimation the informant was reliable, and did not make any attempt to independently assess the informant's credibility. The appeals court found that the hearing officer was protected by qualified immunity and that the inmate could seek damages for privileges lost during administrative confinement. (Green Haven Correctional Facility, New York)

U.S. District Court
INFORMANT
WITNESS

Russell v. Coughlin, 782 F.Supp. 876 (S.D.N.Y. 1991). 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, reargument was granted. The district court found that the first deputy superintendent of the prison was not liable. The inmate failed to establish personal involvement by the superintendent and presented no facts establishing that the superintendent was in any way involved in or aware of any wrongful conduct by the hearing officers. The hearing officer who presided over the hearing was not liable for failure to call two corrections officers as witnesses requested by the inmate. The official explained that the inmate had stated on the record that one officer's testimony would merely be cumulative and that the other officer's testimony had no probative value. However, the hearing officer was not entitled to qualified immunity from liability on the claim that he failed to conduct an independent assessment of the credibility of the confidential informant who provided information that formed the basis of the charges. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
IMMUNITY

Smith v. Coughlin, 938 F.2d 19 (2nd Cir. 1991). An action was brought to challenge the constitutionality of precluding testimony of a monitor at a prison disciplinary proceeding. The U.S. District Court entered summary judgment in favor of prison officials, and the plaintiff appealed. The court of appeals, affirming the decision, found that the officials were entitled to qualified immunity from Section 1983 liability. At the time the appellees precluded the prison monitor from testifying, the legality of the New York Commission of Correction's policy of barring the testimony of such monitors had been determined to be reasonable by the New York courts. (New York)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Smith v. Massachusetts Dept. of Correction, 936 F.2d 1390 (1st Cir. 1991). A prison inmate brought a civil rights action against the Massachusetts Department of Corrections and various correctional officials. The complaint was dismissed by an order of the U.S. District Court and the inmate appealed. The court of appeals found that, in the prison inmate's civil rights suit claiming constitutional violations in a disciplinary proceeding, it was the burden of the defendant officials under substantive law and rule governing summary judgment to come forward with evidence of reasons for a denial of the opportunity to the plaintiff inmate to question the accuser, and it was not sufficient to argue, on appeal from grant of summary judgment for officials, that the request was "obviously" denied to insure the accuser's safety, particularly where, at the time of the disciplinary hearing, the plaintiff inmate and accuser were housed in separate prisons. In addition, the summary judgment with respect to the inmate's claim that he was denied discovery of potentially exculpatory documents was inappropriate where defendant officials offered no reasons for the denial of the documentary evidence, either at the time of the hearing or in connection with their summary judgment motion. (North Central Correctional Institution, Gardner, Massachusetts and Massachusetts Correctional Institution, Cedar Junction, Massachusetts)

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
EVIDENCE
INFORMANTS
NOTICE
WITNESS

Spellmon-Bey v. Lynaugh, 778 F.Supp. 338 (E.D. Tex. 1991), dismissed, 12 F.3d 1097. A prison inmate filed a pro se civil rights complaint alleging denial of due process in connection with a prison disciplinary proceeding. On recommendation by a magistrate judge that the inmate's claims be dismissed as frivolous, the district court found that the civil rights action would be remanded to a magistrate judge for determination as to whether the notice of disciplinary action provided to the prison inmate, which notified him of the offense with which he was charged but not of any of the specific acts allegedly supporting such a charge, was sufficient to satisfy the inmate's due process rights. The inmate's allegation that the notice was constitutionally deficient was not frivolous and could not be summarily dismissed pursuant to a dismissal statute. In addition, the magistrate judge could uphold the prison authorities' decision to bar character witnesses from testifying at disciplinary hearings only after conducting proceedings to ascertain the substance of witnesses' testimony and to discover whether proffered testimony would be unduly hazardous to institutional safety or correctional goals or would have been likely to jeopardize life or safety of persons or security and order of the institution. Absent a legitimate threat to the institutional safety or correctional goals, exclusion of evidence of inmate's "cell restriction" status at the time he was allegedly violating prison rules would have been arbitrary, capricious, and an abuse of discretion. It was also found that the prison disciplinary board could not, as a matter of due process, rely solely on the testimony of the charging officer regarding hearsay statements of an unidentified informer to support a revocation of the inmate's good time credits, absent some independent evaluation of the credibility and reliability of the informer. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
DISCIPLINE
EQUAL PROTECTION
TRANSFER

Stewart v. McManus, 924 F.2d 138 (8th Cir. 1991). A prisoner brought a Section 1983 action asserting claims based on his disciplinary treatment by Iowa correctional authorities after he had been transferred from Kansas. The U.S. District Court found that Iowa disciplinary rules governed disciplinary actions against the prisoner, and the prisoner appealed. The court of appeals found that the Interstate Corrections Compact and implementing contract did not require the application of Kansas disciplinary rules and regulations to the prisoner, who was transferred from Kansas to Iowa to complete his term. The contract provision prohibiting the receiving state from imposing a type of discipline prohibited by laws of the sending state did not require that Iowa correctional authorities impose Kansas' disciplinary rules to violations of Iowa penitentiary's disciplinary rules. In addition, the application of Iowa disciplinary rules did not violate the prisoner's right to equal protection of law, as under the Interstate Corrections Compact adopted by Iowa and Kansas, the prisoner had to be treated equally with similar inmates of the receiving state and not similarly with Kansas inmates. (Iowa State Penitentiary)

U.S. District Court
DUE PROCESS
NOTICE
WITNESS
DISCIPLINARY
PROCEDURES

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
DISCIPLINARY
PROCEDURES
REGULATIONS

Studway v. Feltman, 764 F.Supp. 133 (W.D. Wis. 1991). An inmate brought a federal civil rights action against an institutional director and an unknown lieutenant, claiming that their failure to provide him with a timely disciplinary hearing violated due process. On a motion to dismiss for failure to state a claim, the district court found that a Wisconsin prison regulation requiring that a due process hearing be held no later than 21 days after the inmate received a copy of the conduct report and hearing notice, was procedural, and the violation thereof may have provided a State claim that the hearing committee lacked jurisdiction to proceed in the case but did not rise to a constitutional claim. (Oshkosh Correctional Institution, Oshkosh, Wisconsin)

U.S. Appeals Court
INFORMANTS

Taylor v. Wallace, 931 F.2d 698 (10th Cir. 1991). An inmate brought an action alleging he was denied due process in the course of prison disciplinary proceedings. The U.S. District Court dismissed the complaint as frivolous, and appeal was taken. The court of appeals, vacating and remanding the case, noted that the finding of the prison disciplinary committee could not be upheld absent an indication that the disciplinary committee made any independent finding regarding the reliability of the confidential informants' testimony. (Oklahoma Department of Corrections)

U.S. District Court
WRONGFUL
DISCIPLINE

Turner v. Maschner, 777 F.Supp. 875 (D. Kan. 1991). A prisoner brought a Section 1983 action alleging wrongful discipline for theft by deception as a result of his obtaining junior high school directories and writing letters to female students. The U.S. District Court dismissed the complaint, and the prisoner appealed. The court of appeals vacated and remanded. On remand, the district court found that the prisoner could be disciplined for theft by deception based on his actions in obtaining student directories from schools and then writing letters to female students, despite the prisoner's offer to pay for the directories. The prisoner had intentionally deceived the schools in his requests for directories and the schools would not have sent directories had they known the request came from a prison inmate. (Lansing Correctional Facility, Kansas)

U.S. District Court
ACCESS TO COURT
DUE PROCESS
DISCIPLINARY
PROCEDURES
EVIDENCE

Washington v. Chrans, 769 F.Supp. 1045 (C.D. Ill. 1991). A state inmate brought a Section 1983 action claiming his constitutional rights were violated in the course of disciplinary proceedings. Action was stayed pending exhaustion of state remedies based on the conclusion that exhaustion was required due to the fact that the inmate sought restoration of good time credits as part of the relief. After a final judgment was rendered in the inmate's state mandamus proceeding, the inmate returned to federal court to proceed with a Section 1983 claim and to also pursue habeas relief. On the parties' motions, the district court found that the Illinois doctrine of collateral estoppel and results of a state mandamus proceeding did not bar the inmate's subsequent Section 1983 due process challenge to one disciplinary report, to lock-down conditions at the prison, and to a lack of minority members on the adjustment committee. The state court squarely addressed the due process violation only with respect to another report, and other claims were not presented in the mandamus proceeding. In addition, the adjustment committee summary explaining the committee's reasons for finding the state inmate guilty of misconduct did not satisfy minimum due process requirements. The summary made a general finding and merely incorporated other reports, and did not state evidence relied upon in making a determination of guilty. Moreover, the summary contained inaccurate information and did not give reasons for discrediting the inmate's version of events. And, although the state inmate's interest in knowing the names of those who accused him of conspiring to commit murder was outweighed by prison officials' interested in protecting the accusers, the inmate had a due process right to be apprised of approximate times, dates, and places of alleged conspiratorial and related gang activity. (Illinois Department of Corrections)

U.S. Appeals Court
DUE PROCESS
DISCIPLINARY
PROCEDURES
EVIDENCE

Young v. Kann, 926 F.2d 1396 (3rd Cir. 1991). A pro se inmate brought a Section 1983 action alleging that his due process rights were violated in two disciplinary hearings. The U.S. District Court dismissed the complaint as legally frivolous, and the inmate appealed. The court of appeals found that the inmate's claim that a disciplinary hearing officer violated his due process rights by refusing to produce a letter in which the inmate allegedly threatened his cellmate, even though the letter formed part of the basis for the disciplinary charges, was arguably meritorious and, thus, should not have been dismissed as frivolous. However, the inmate's due process claims stemming from a second disciplinary hearing lacked arguable factual or legal basis and were subject to dismissal as being frivolous. Although the inmate claimed that his due process rights were violated at the hearing because he was forced to proceed without being presented with a copy of the investigator's report, the inmate had no right to receive a copy of the report because he waived his right to have a staff representative present and he admitted that he engaged in disruptive conduct. (United States Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
RETALIATION

Young v. Molloy, 760 F.Supp. 43 (W.D.N.Y. 1991). A state inmate brought a civil rights action against a prison official for violating his constitutional rights in connection with disciplinary actions. On motion for partial summary judgment, the district court found that material fact issues existed in connection with the inmate's claims that his First and Fourth Amendment rights were violated when a misbehavior report was issued in connection with the manner in which he disposed of his food tray and that the report was in fact issued in retaliation for his assertion of those rights, precluding summary judgment on the Section 1983 claim against the prison official. (Attica Correctional Facility, New York)

1992

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Addison v. Pash, 961 F.2d 731 (8th Cir. 1992). An inmate brought a civil rights action against prison officials. The U.S. District Court dismissed the action and the inmate appealed. The court of appeals found that there was no due process violation as a result of the officials' decision to confiscate property that was prohibited in disciplinary segregation following the finding of the inmate guilty of a conduct violation and the recommendation of ten days of disciplinary segregation. Although the violation was dismissed, the inmate could not state a due process claim against the defendants because they did not make their disciplinary recommendation until after they held a hearing. It was also found that the denial of cigarettes to an inmate in disciplinary segregation was not deliberate indifference to basic human needs. (Missouri Department of Corrections)

U.S. District Court
RULES

Arey v. Robinson, 819 F.Supp. 478 (D. Md. 1992). An inmate brought an action against prison officials, alleging his right to privacy was violated by the design of a prison bathroom and that he was wrongfully found guilty of violating disciplinary rules. On report and recommendation of a United States Magistrate Judge, the district court found that a prison regulation requiring an inmate to return medication to the prison pharmacy within twenty-four hours of the expiration date was unconstitutionally vague, violating due process. The regulation did not inform an inmate of ordinary intelligence that failure to return medication after a "stop date" constituted possession of unauthorized medication, particularly when refills of the prescription were allowed. (Jessup Pre-Release Unit, Maryland Correctional Pre-Release System)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Battle v. Barton, 970 F.2d 779 (11th Cir. 1992), cert denied, 113 S.Ct. 1300. An inmate brought a civil rights action against prison officials based on his removal from a disciplinary hearing. The U.S. District Court entered summary judgment in favor of the officials, and the inmate appealed. The court of appeals, affirming the decision, found that the inmate's Fifth Amendment privilege against self-incrimination was not violated when he was removed from the prison disciplinary proceeding for refusing to give his name and prison number to the hearing panel, absent an indication that the inmate's refusal to answer the panel's questions was in any way predicated upon his invocation of his Fifth Amendment privilege, or his fear that his answers might be self-incriminating. Furthermore, the hearing panel's removal of the inmate from the prison disciplinary hearing was logically related to correctional goals and did not violate the inmate's due process rights; the inmate's obstructionism undermined discipline and order that were essential in the prison environment in general and the disciplinary proceedings in particular. (Florida State Prison)

U.S. District Court
DISCIPLINARY
PROCEDURES
NOTICE

Bruner v. Rasmussen, 792 F.Supp. 731 (D. Utah 1992). A prisoner brought an action against prison officials alleging denial of due process concerning disciplinary proceedings. The district court found that the claim against prison officials in their official capacity was barred by the Eleventh Amendment. In addition, the prison officials did not violate the

inmate's right to due process by neglecting to classify the incident giving rise to discipline as a major or minor disciplinary violation when they gave notice of the charges. Finally, the failure to include the hearing date on the notice given to the prisoner of the disciplinary action did not violate his right to due process. He received notification of the disciplinary hearing more than a month in advance and he made no claim that he was prejudiced by the oversight. (Utah State Prison)

U.S. District Court
DUE PROCESS

Burgardt v. Davies, 804 F.Supp. 180 (D. Kan. 1992). An inmate at a state correctional facility proceeded pro se and in forma pauperis on a federal civil rights complaint against prison officials, who moved for summary judgment. The district court found that the inmate had already received full relief on a due process claim through the prison's internal administrative review. No factual or legal basis existed for the inmate's due process claim based on alleged denial of opportunity to call witnesses during his disciplinary hearing, arising out of his destruction of state property. On administrative review the Warden had revoked the conviction and sentence, the offense was no longer on the inmate's prison record, and neither a fine nor repair costs were ever deducted from the inmate's prison account. (Lansing Correctional Facility, Lansing, Kansas)

U.S. District Court
CORRESPONDENCE
EXPUNGEMENT

Campbell v. Williamson, 783 F.Supp. 1161 (C.D.Ill. 1992). A state inmate brought a civil rights action against various law enforcement and correctional officials, alleging due process violations in connection with his return to prison following his mistaken release. The U.S. District Court dismissed the complaint, finding that the inmate did not have a cognizable liberty interest in remaining free and could be properly detained by local law enforcement officers without a warrant so that he could be returned to state custody. A civil rights action was not the proper vehicle for determining the state inmate's proper release date; the inmate was instead required to exhaust state remedies and then bring a habeas corpus action if he sought immediate or more speedy release. It was also found that even assuming that prison officials failed to remove a disciplinary report from the inmate's file as directed by the disciplinary panel, the presence of the unadjudicated disciplinary report in the inmate's file did not implicate the Fourteenth Amendment, and the inmate, who had been approved for housing at a medium security facility, did not have a constitutionally protected liberty interest in remaining at that facility. (Illinois Department of Corrections)

U.S. District Court
DUE PROCESS
PROCEDURES

Carter v. Thompson, 808 F.Supp. 1548 (M.D. Fla. 1992). A prison inmate brought a suit under Section 1983 for correctional officials' alleged violation of his Eighth Amendment and due process rights. On the defendants' motion for summary judgment, the district court found that the superintendent and assistant superintendent of the correctional institution were not liable under Section 1983 for alleged violations of the inmate's due process rights at a disciplinary hearing. Neither party was present at the hearing nor involved in the decision to charge the inmate or to find him guilty. It was also found that procedures employed in connection with the prison disciplinary hearing satisfied minimum requirements of due process, although the prison authorities' failed to conduct any additional investigation before filing a second charge. The first charge was fully investigated, the second charge was based on the same facts as the first charge, and the inmate received advance written notice of the second charge and had an opportunity to present argument in his defense. However, a material question of fact, whether it was policy and practice of correctional officials of not having forms available in disciplinary confinement needed to allow prisoners to appeal their disciplinary report, precluded entry of summary judgment for officials on the inmate's due process claims. (Charlotte Correctional Institution, Florida)

U.S. District Court
WITNESS

Cummings v. Caspari, 797 F.Supp. 747 (E.D. Mo. 1992). An inmate brought an action against prison officials seeking damages and declaratory and injunctive relief, alleging that the officials denied him due process in certain disciplinary proceedings, subjected him to cruel and unusual punishment and refused him medical care. The officials moved for summary judgment. The district court found that the inmate's due process rights were not violated in connection with a disciplinary hearing, although the inmate alleged conspiracy to fabricate charges against him. The statements in the written reports for each charge constituted some evidence to support the hearing committee's findings. In addition, the fact that the inmate was not allowed to call three witnesses at the hearing did not violate due process, where the inmate was removed from the hearing because he became belligerent and hostile. The inmate was not denied due process when he was placed in administrative segregation on the basis of an arson charge that was later dropped and removed from his record where prison officials promptly expunged his record of the charge. (Missouri Eastern Correctional Center)

U.S. Appeals Court
DUE PROCESS
DISCRIMINATION
DISCIPLINARY
PROCEDURES

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

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
REGULATIONS

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

U.S. District Court
EVIDENCE
POLYGRAPH

Flanagan v. Warden, U.S. Penitentiary, 784 F.Supp. 178 (M.D. Pa. 1992), affirmed, 6 F.3d 779. An inmate filed a pro se habeas corpus petition, challenging the institution's disciplinary action against him for possessing a weapon. The district court found that evidence supported the finding in the prison disciplinary hearing that the weapon found in the inmate's cell during a routine search belonged to him; he had been the sole occupant of the cell for the past eight months, and the officer who found the weapon testified that it was carefully taped to the bottom of the inmate's locker in such a manner that it had probably been placed there by someone standing inside the cell. The inmate was not entitled to a fingerprint analysis of the weapon or to administer a polygraph examination to prove his veracity as he received notice of the charges against him prior to the hearing, was present at the hearing, and called two inmate witnesses to testify on his behalf, and he had no constitutional right to the grant of his request for "scientific" testing to establish non-ownership of the weapon. The court also found that the inmate, who was unsuccessful on his pro se habeas corpus petition, was subject to sanctions under Rule 11. The inmate was an attorney who had persisted in filing repeated papers raising groundless objections at every turn of the case, and the only inference which could reasonably be drawn from his conduct was that his sole purpose was to harass the defendants and needlessly prolong and complicate the case. (U.S. Penitentiary, Lewisburg, Pennsylvania)

U.S. District Court
DUE PROCESS
INTERPRETER

Gabai v. Jacoby, 800 F.Supp. 1149 (S.D.N.Y. 1992). A prison inmate brought a Section 1983 action against prison officials, alleging that one official used excessive force and was otherwise deliberately indifferent to the inmate's medical needs, and that the inmate's due process rights were violated in a disciplinary proceeding. The defendants moved for summary judgment. The court found that the failure to provide the inmate with a Hebrew interpreter at his prison disciplinary hearing did not violate the inmate's due process rights. The inmate did not rebut sworn statements that he understood spoken and written English and could function in English, and the inmate did not set forth how, if at all, he was prejudiced by denial of an interpreter. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

Griffin v. Spratt, 969 F.2d 16 (3rd Cir. 1992). A state prisoner brought a Section 1983 action against prison officials alleging that he was placed in disciplinary custody in violation of due process. The U.S. District Court found that the failure to preserve fermented beverages until a disciplinary hearing violated due process, and the officials appealed. The court of appeals, reversing and remanding, found that the failure to preserve the beverage found in the prisoner's cell did not violate the prisoner's due process rights absent a showing that the beverages were discarded to prevent their use for exculpatory purposes at the disciplinary hearing. (Pennsylvania State Correctional Institution, Graterford)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

Griffin-Bey v. Bowersox, 978 F.2d 455 (8th Cir. 1992). An inmate who was disciplined for writing a letter to another inmate brought a federal civil rights claim against correctional officers, alleging due process violations. The U.S. District Court granted summary judgment in the defendants' favor, and the inmate appealed. The appeals court, affirming the decision, found that the inmate failed to assert that presentation to him of the letter he allegedly wrote would have resulted in a different outcome at the disciplinary hearing. He also failed to present any evidence that the acting assistant superintendent and superintendent should have been aware of any alleged due process violations, absent an indication that he made them aware of his due process claims. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
EVIDENCE
GOOD-TIME
WITNESS

Hamilton v. O'Leary, 976 F.2d 341 (7th Cir. 1992). An inmate sued a former director of the Illinois Department of Corrections, a prison warden, and other department officials for alleged violations of equal protection and due process rights concerning revocation of good time credits. The U.S. District Court dismissed for failure to state a claim, and the inmate appealed. The appeals court, affirming the decision, found that the evidence before the disciplinary committee that weapons were found in the cell occupied by and under the control of the inmate and his cellmates provided the required "some evidence" to support the committee's finding that the inmate was guilty of possessing homemade weapons. The court noted that the failure of prison officials to call correctional officers involved in the search of the defendant's cell as witnesses in the disciplinary hearing did not violate due process where the prisoner was given an opportunity to call witnesses but failed to do so; the prisoner's statement at the hearing that the officers, called as witnesses, would corroborate this testimony was not a request to call the officers as witnesses. (Stateville Correctional Center, Joliet, Illinois)

U.S. District Court
DUE PROCESS
LENGTH OF
SEGREGATION
PUNITIVE
SEGREGATION

Haynes v. Lambor, 785 F.Supp. 754 (N.D. Ill. 1992). A state prisoner brought an action against prison authorities, claiming that they deprived him of liberty without due process by subjecting him to excessive discipline and causing him to remain in punitive segregation 19 days longer than provided for in prison regulations. On the defendants' motion for summary judgment, the district court found that the prison disciplinary committee did not violate the Eighth Amendment or the due process clause of the Fourteenth Amendment when it imposed an excessive sentence on the prisoner for fighting, where there was no evidence that the excessive sentence was the result of anything more than an error. It was also found that the delay in releasing the prisoner from punitive segregation did not constitute a due process violation where the prisoner received a fairly prompt remedy, and there was no indication that prison authorities ignored his requests to be released from segregation. The defendants could not be held liable for the alleged deprivation which occurred when the prisoner was kept in demoted status for three months, rather than one month as called for by prison regulations, where there was no evidence that the defendants were aware of the prisoner's de facto demoted status. (Pontiac Correctional Center and Stateville Correctional Center, Illinois)

U.S. Appeals Court
DUE PROCESS
EVIDENCE
DISCIPLINARY
PROCEDURES

Holt v. Caspari, 961 F.2d 1370 (8th Cir. 1992). A prisoner brought a civil rights action against prison officials for violation of his due process rights in disciplinary proceedings. The U.S. District Court dismissed the action, and the prisoner appealed. The court of appeals reversed and remanded. On rehearing, the court of appeals found that the prison officials' failure to produce a laboratory report in disciplinary proceedings for possession of valium did not violate the inmate's due process rights where the pills were clearly marked "valium." (Missouri)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
VISITS

Mendoza v. Blodgett, 960 F.2d 1425 (9th Cir. 1992). A prisoner brought a Section 1983 action against administrators and correctional officers at a prison to recover for violation of procedural due process in connection with a dry cell watch for contraband in bowel movements and in connection with suspension of visitation privileges. The U.S. District Court entered summary judgment for the defendants, and the prisoner appealed. The court of appeals found that the prison's dry cell watch regulation for detecting contraband in bowel movements created due process interest, and a prisoner could be placed on watch only upon determination that there was reasonable suspicion of secreting contraband, and the duration of the watch was subjected to particularized criteria. According to the court, the procedural due process rights of the prisoner were violated by a hearing within five days after a dry cell watch was placed on him as he was entitled to notice of reason for being placed on the watch, an opportunity to respond in writing within a reasonable time after commencement of the watch, and consideration of the response, but as the procedural due process rights of the prisoner were not clearly established, the prison officials were entitled to qualified immunity from Section 1983 liability. The court also found that Washington's prison visitation regulations created a due process liberty interest, and, thus, the visiting rights could be suspended under an enumerated list of circumstances only after finding of guilt pursuant to a regular disciplinary hearing. In addition, written notice had to be given to the inmate and visitor, and regulations did not state that administrative staff "reserves the right" to allow or disallow visits. However, the prisoner's procedural due process rights in visitation were not violated by a 90-day suspension and informal infraction hearing, even though the infraction was subsequently dismissed. The dismissal of the charge against the prisoner for attempting to smuggle

drugs into the prison did not entitle him to reinstatement of visitation rights under Washington law, as the suspension was continued on the basis of the wife's attempts to smuggle contraband to the prisoner on prior occasions and the finding of a balloon with a white slimy substance and the tip bitten off in a restroom after the prisoner's child used it. (State Penitentiary, Walla Walla, Washington)

U.S. Appeals Court
WITNESS
COUNSEL
DISCIPLINARY
PROCEDURES

Miller v. Duckworth, 963 F.2d 1002 (7th Cir. 1992). A petition for habeas corpus was filed by a state prisoner alleging that he was deprived of his due process rights during a prison disciplinary hearing convened to determine if he was guilty of escaping from a youth correctional center. The U.S. District Court denied the petition, and the prisoner appealed. The court of appeals, affirming the decision, found that the inmate was not entitled to the assistance of a lay advocate. Due process did not require that the inmate be appointed a lay advocate unless the inmate was illiterate or the complexity of the issue made it unlikely that the inmate would be able to collect and present evidence necessary for adequate comprehension of the case. The court also found that the inmate was not unconstitutionally prevented from calling witnesses on his own behalf in the prison disciplinary hearing. The prison official's determination that the inmate's request to communicate with other inmates at the state youth correctional facility might pose a threat to security by revealing his escape route to others fell within "the necessary discretion to keep the hearing within reasonable limits." (Indiana State Prison)

U.S. Appeals Court
DUE PROCESS

Nicholson v. Moran, 961 F.2d 996 (1st Cir. 1992). An inmate brought an action alleging that he was deprived of his constitutional rights in violation of Section 1983 and certain provisions of Rhode Island law. The U.S. District Court dismissed the complaint and appeal was taken. The court of appeals, reversing and remanding, found that the inmate, by way of rules resulting from a consent decree specifying the procedure to be used by Rhode Island correctional institutions with regard to inmate disciplinary actions, had a state-created liberty interest under the due process clause in remaining in the general prison population and, thus, the inmate's complaint that he was sentenced to punitive segregation for providing false information in connection with a complaint he filed stated a claim under Section 1983. (Rhode Island Adult Correctional Institute)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

Rasheed-Bey v. Duckworth, 969 F.2d 357 (7th Cir. 1992). An inmate sued Indiana prison officials and employees alleging violation of his civil rights when he was sentenced to disciplinary segregation following an allegedly inadequate hearing. The U.S. District Court, following a bench trial, entered judgment in favor of the defendants and the inmate appealed. The appeals court, affirming the decision, found that the inmate's due process rights were not violated by refusing to reveal a confidential file of a prison investigator regarding a money order scheme. Although the inmate was notified of the underlying factual basis of the charges through the conduct and investigative reports, he failed to request further information on the investigation. (Indiana State Prison)

U.S. Appeals Court
DUE PROCESS
WITNESS

Scott v. Kelly, 962 F.2d 145 (2nd Cir. 1992). An inmate brought actions under Section 1983 alleging that segregation in keeplock violated his right to due process. After the cases were consolidated, the U.S. District Court granted summary judgment in favor of the defendants and the inmate appealed. The court of appeals found that the failure of a prison official to call witnesses at a disciplinary hearing as requested by the inmate, did not deny the inmate due process, where the inmate did not advise the official what the testimony of the witnesses would be, and thus the official had no reason to believe that the testimony would be relevant or that it would affect his decision. The detention of the inmate in keeplock during the weekend after his release date did not deny him due process when the inmate did not provide prison guards with a copy of the release order until Friday. The guards could not verify its authenticity over the weekend, and, given the potential for inmate fraud, it was prudent to hold the inmate in keeplock until they could do so on Monday. (New York State Department of Correctional Services Attica Facility)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
LIBERTY INTEREST

Warren v. Stempson, 800 F.Supp. 991 (D.D.C. 1992), affirmed, 995 F.2d 306. An inmate brought a Section 1983 action regarding his treatment and prison conditions. On the District of Columbia's motion to dismiss, the district court found that the inmate's allegations that correctional officers did not follow their own procedures did not present a federal question. In addition, even if the prison regulations created a liberty interest triggering due process rights, the inmate was provided with at least the minimum process required by the Fifth Amendment concerning the disciplinary proceeding. The inmate

received written notice of the hearing and an explanation of his rights, he was present and testified at the hearing, and he was provided with a prompt appeal. He also received a copy of the investigative report and disciplinary report, as well as a copy of a memorandum denying his appeal. (District of Columbia)

U.S. Appeals Court
DUE PROCESS
LIBERTY INTEREST
EVIDENCE
PROCEDURES

Wheeler v. Sims, 951 F.2d 796 (7th Cir. 1992). An inmate brought a civil rights action against prison officials, alleging that a beating administered by guards resulted in the inmate's alleged paralysis. The U.S. District Court dismissed the inmate's due process count, and entered judgment on jury verdict for the officials on the inmate's Eighth Amendment claims, and the inmate appealed. The court of appeals found that due process did not require that the inmate, who was accused of disciplinary violations, be given a right to present his own version of events in written form, as the inmate received procedure to which he was entitled when the Adjustment Committee gave him an opportunity, which he rejected, to present oral evidence, and then reviewed charges and available evidence. In addition, the reports contradicting the inmate's alleged paralysis were prepared in the ordinary course of operating the correctional facility, for purposes of introduction of those records under the business records exception to hearsay in the civil rights action. The prison authorities had a legitimate reason for attempting to discern whether the alleged paralyzed prisoner was faking, for he might very well fake disability for an inordinate period of time in the hopes of effecting an escape as a result of officers believing him to be immobile and leaving him unguarded at an inopportune time. (Pontiac Corrections Center, Illinois)

U.S. District Court
CONDITIONS OF
SEGREGATION
RETALIATION
TRANSFER

White v. Nix, 805 F.Supp. 721 (S.D. Iowa 1992), affirmed, 7 F.3d 120. An inmate brought a civil rights suit against prison officials arising out of his confinement in a "screened" prison cell. The district court found that the placement of the state inmate in the cell did not violate his Eighth Amendment right to be free from cruel and unusual punishment. The cell was in a cellhouse that housed inmates pending investigations for disciplinary infractions. The cell had a toilet, sink, a single bed and a table. A screened wire mesh covers the bars of the cell. The court ruled that any uncleanliness in the interior of the cell could have been corrected by the inmate's request for cleaning supplies. In addition, the inmate was only confined to the screened cell on a temporary basis for eleven days. The court also found that the inmate failed to show that his placement in the screened prison cell was for other than reasons of institutional security and safety following his assaultive behavior. The inmate failed to prove that his placement was retaliatory, because of his earlier lawsuits. The inmate also failed to show a violation of his due process rights arising from the officials' 48-hour delay in transferring him from the screened cell after he exhausted his administrative appeals in a disciplinary matter where the defendant did not have a liberty interest in the immediate transfer by reason of an informal prison rule that inmates in summary segregation were not to be transferred until they exhausted their administrative appeals. (Iowa State Penitentiary)

U.S. District Court
DUE PROCESS
RETALIATION

Winder v. Leak, 790 F.Supp. 1403 (N.D. Ill. 1992). An inmate filed a civil rights action against prison officials. The district court granted the motion for summary judgment in part and denied it in part. The court found that the inmate who alleged that a prison disciplinary process was used as retribution for his filing of a grievance failed to show injury proximately caused by the alleged policy or custom of retaliation; the punishment of being placed in isolation occurred only after an independent hearing by the prison disciplinary board and a finding that the inmate committed the acts as charged, and the punishment was set by the board, not by correctional officers. (Residential Treatment Unit, Cook County Department of Corrections, Illinois)

U.S. Appeals Court
EXPUNGEMENT
GRIEVANCE
RULES

Wolfel v. Morris, 972 F.2d 712 (6th Cir. 1992). Prison inmates sued prison officials and the prison for an alleged civil rights violation based on imposition of discipline for circulation of a petition aimed at redressing grievances against prison conditions. The U.S. District Court found that prison regulations were unconstitutionally vague as applied, ordered expungement of the discipline, but found that the plaintiffs were not entitled to monetary damages, and appeals were taken. The court of appeals found that the prison regulation allowing punishment of the inmates for circulating the petition was unconstitutional where applied without adequate warning. However, the court noted that the prisoners were not entitled to an injunction to prevent prison officials from using the regulations to punish circulation of petitions in the future. The regulation would not be impermissibly vague if sufficient notice were given to prisoners that the regulations would be enforced. (Southern Ohio Correctional Facility)

U.S. District Court
POLYGRAPH
SEGREGATION
TRANSFER

Wright v. Caspari, 779 F.Supp. 1025 (E.D. Mo. 1992). An inmate brought a civil rights action against prison officials. The district court found that there was sufficient evidence to support a finding of disciplinary violation by the inmate, and he was not entitled to take a lie detector test in connection with the disciplinary proceedings. In addition, the refusal

of the prison disciplinary board to call the inmate's witnesses to the disciplinary hearing did not deprive him of due process where the witnesses had been interviewed and it was determined that they were character witnesses rather than fact witnesses. It was also found that the impending transfer of the inmate to another penal institution following disciplinary proceedings did not rise to the level of an Eighth Amendment violation. A prisoner does not have a constitutional right to pick and choose his prison, although he cannot be transferred for exercising his constitutional rights. (Missouri Department of Corrections)

U.S. Appeals Court
DUE PROCESS
PROCEDURES
WITNESS

Young v. Hoffman, 970 F.2d 1154 (2nd Cir. 1992), cert. denied, 114 S.Ct. 115. An inmate brought an action against a hearing officer to recover for denial of due process in barring the inmate from a disciplinary hearing, not calling witnesses in the inmate's behalf, and being partial. The U.S. District Court granted summary judgment in favor of the officer and the inmate and awarded nominal damages of one dollar. Appeal and cross appeal were taken. The appeals court, reversing in part, and affirming in part, found that the administrative reversal of the decision to discipline the inmate, based on the failure to call witnesses, cured any due process violation in barring the inmate from the disciplinary hearing and not calling witnesses on his behalf. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
EVIDENCE
LIABILITY

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

1993

U.S. District Court
DUE PROCESS
LIBERTY INTEREST

Akbar v. Gross, 816 F.Supp. 501 (E.D. Wis. 1993). An inmate brought an action alleging violation of due process concerning a disciplinary proceeding. The district court found that neither the United States Constitution nor the provision of the Wisconsin Administrative Code for placement of inmates in temporary lockup creates a protectable liberty interest in remaining in the general prison population. Furthermore, the inmates' constitutional rights were not violated by alleged procedural errors in the disciplinary hearing where the conduct report that was the subject of the disciplinary hearing was dismissed and the inmate received no punishment resulting from that report. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
DUE PROCESS
SEGREGATION

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 found that the inmate's due process rights were not violated with respect to his placement in administrative and disciplinary segregation. The inmate was not denied a due process right to a hearing when, two days after the disciplinary segregation expired, prison officials reversed the previous decision and ordered a new hearing but no hearing was held where the inmate was afforded a hearing before receiving the sentence. Because he was not placed in disciplinary segregation after the decision was reversed, he was not entitled to an additional hearing and could not claim to have been denied due process. (Halawa Correctional Facility, Hawaii)

U.S. Appeals Court
DUE PROCESS
NOTICE

Benitez v. Wolff, 985 F.2d 662 (2nd Cir. 1993). An inmate brought a civil rights action against prison officials, alleging violation of his due process rights in connection with a disciplinary hearing. The U.S. District Court dismissed the complaint as frivolous, and the inmate appealed. The court of appeals reversed and remanded. On remand, the district court entered judgment in favor of the officials, and the inmate again appealed. The court of appeals, affirming the decision, found that the prison officials violated the inmate's due process rights by giving the inmate only five hours to review a statement detailing twelve charges against him, and subsequently forcing him to rely on his memory in preparing for his defenses before the disciplinary hearing. The officials were, however, entitled to qualified immunity in that although it was established that the inmate was

entitled to written notice of charges twenty-four hours before a disciplinary hearing, no court had ruled that the requirement meant that officials were required to allow the inmate to retain written notice for 24 hours. (Attica Correctional Facility, New York)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
PUNISHMENT

Boutchee v. Grossheim, 11 F.3d 101 (8th Cir. 1993). A disciplined inmate brought a suit alleging denial of due process. The U.S. District Court granted judgment as matter of law for the prison officials, and the inmate appealed. The appeals court, affirming the decision, found that sanctioning the inmate with a four-hour lock-up for a minor rule violation did not deprive him of due process. Although the person who issued the violation also determined the sanction, the prison officials followed appropriate procedures in the institution handbook. Additional uncalled for appellate procedures were also provided. (Iowa Men's Reformatory)

U.S. District Court
CORRESPONDENCE

Bressman v. Farrier, 825 F.Supp. 231 (N.D. Iowa 1993). An inmate brought an action against prison officials challenging discipline imposed for uncomplimentary statements about prison officials contained in a letter that the inmate wrote to his brother. The district court found that the inmate could not be disciplined for comments made in the letter to his brother although he knew that the comments would be read by prison officials. (Iowa Men's Reformatory)

U.S. District Court
DUE PROCESS
EVIDENCE

Brewer v. Seiter, 838 F.Supp. 340 (S.D. Ohio 1993). An inmate brought a Section 1983 civil rights action against a prison disciplinary board. The district court found that the prison disciplinary board violated the inmate's due process rights by failing to provide a contemporaneous written record indicating why they believed a confidential informant's testimony incriminating the inmate over other testimony. However, the prison officials who violated the inmate's due process rights were entitled to qualified immunity. A reasonable prison official would not have known at the time of the prison disciplinary action in 1986 that the requirement would be promulgated two years later. (Southern Ohio Correctional Facility)

U.S. Appeals Court
GRIEVANCE
RESTITUTION

Buckley v. Barlow, 997 F.2d 494 (8th Cir. 1993). An inmate brought a suit for state prison officials' alleged violation of his civil rights. The U.S. District Court entered judgment in favor of the defendants, and the inmate appealed. The appeals court, affirming the decision, found that the inmate had no liberty interest in having his grievances processed by prison officials in accordance with federal regulations. In addition, the inmate had no Seventh Amendment right to a jury trial in a prison disciplinary setting. The deduction of one half of the inmate's idle pay pursuant to the prison disciplinary committee's restitution order did not amount to cruel and unusual punishment on the theory that it thereby deprived the inmate of funds to purchase personal hygiene items. (Iowa)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
EVIDENCE
NOTICE
WITNESS

Chesson v. Jaquez, 986 F.2d 363 (10th Cir. 1993). An inmate brought a Section 1983 action alleging a violation of due process rights in a prison disciplinary hearing. The U.S. District Court dismissed the complaint and denied a motion for reconsideration, and the inmate appealed. The court of appeals found that six days was a reasonable time after service of motion for a new trial for filing of the motion, especially considering six days included a weekend; therefore, the motion was timely filed. In addition, the disciplinary committee's alleged failure to allow the inmate, who had been charged with attempted escape, to submit into evidence alleged contraband items found in his cell and to have the officer who searched his cell present at the hearing did not violate the inmate's due process rights. The disciplinary committee had before it a list of items that were found in the inmate's cell and heating vent and from that list the committee could readily decide which items had legitimate inmate uses and which did not, and the inmate failed to show that the officer could have offered testimony to support his argument that he was not involved in an escape attempt. (Shadow Mountain Correctional Facility, Colorado)

U.S. Appeals Court
LIBERTY INTEREST
RULES

Conner v. Sakai, 994 F.2d 1408 (9th Cir. 1993). An inmate brought a Section 1983 action against the State of Hawaii and various prison officials. The U.S. District Court entered summary judgment for the state and the inmate appealed. The appeals court, affirming in part, reversing in part and remanding, found that the due process clause prohibited the state from punishing the inmate for praying aloud in Arabic. The language of the prison rule requiring inmates to communicate in the English language only, including telephone calls, visits and letters, on its face clearly proscribed only interpersonal communication. The state's interpretation of the English only rule as proscribing praying aloud in non-English was most unexpected and highly unusual and therefore, the rule could not be constitutionally applied to punish the inmate, as the rule gave the inmate insufficient notice that he was forbidden to pray in a foreign language. The court also found that Hawaii's prison regulations created a liberty interest in the inmate remaining free from disciplinary segregation. The regulations stated that the inmate had to admit guilt or the prison disciplinary committee had to be presented with substantial evidence before the committee could make a finding of guilt. If the inmate did not admit guilt or the committee did not find substantial evidence, then freedom from disciplinary segregation had to follow. (Halawa Correctional Facility, Hawaii)

U.S. District Court
ASSISTANCE
WITNESSES

Delgado v. New York City Dept. of Correction, 842 F.Supp. 711 (S.D.N.Y. 1993). A former inmate sued prison officials under Section 1983 for failing to interview other inmates quickly enough after an incident involving the inmate so that they could have been called at the inmate's disciplinary hearing. The district court, adopting the report and recommendation of a U.S. Magistrate, dismissed the suit finding that the officials were not required to take affirmative steps to interview all possible witnesses to an incident in order to assist an inmate's defense. (New York Department of Correction)

U.S. District Court
DUE PROCESS
RULES
SEGREGATION

El-Amin v. Tirey, 817 F.Supp. 694 (W.D. Tenn. 1993). An inmate brought an action against various prison and corrections officials for allegedly violating his civil rights concerning his conviction for a disciplinary offense of "creating a disturbance." On motion of some officials for summary judgment, the district court found that the filing of the disciplinary report against the inmate for his conduct in speaking to work crews about filing grievances did not violate the inmate's First Amendment rights. The inmate was interfering with the ability of the work crews to report to their assigned locations, and many other opportunities were available for the inmate to speak with the work crews. In addition, the disciplinary board was not biased in its handling of the disciplinary charge against the inmate based upon the status of one member of the disciplinary board as a member of the grievance committee that heard grievances that the inmate was discussing with the work crews, or based upon that member's questioning witnesses during the disciplinary hearing. The disciplinary offense of "creating a disturbance" was not unconstitutionally vague as applied as a "Class A" offense to the inmate's conduct in discussing potential grievances with members of the work crew as they were waiting to be checked through a gate, causing the group of prisoners to gather around him and causing the checking process to slow down. However, a genuine issue of material fact about whether the disciplinary board had a blanket policy of refusing to allow inmates charged with a disciplinary offense and confined in a segregation unit from presenting live inmate testimony at the disciplinary hearing precluded summary judgment on the inmate's due process claim and the officials' qualified immunity defenses. (Fort Pillow Prison and Farm, Henning, Tennessee)

U.S. Appeals Court
LENGTH OF
SEGREGATION
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. District Court
DISCRIMINATION
EQUAL PROTECTION

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
INFORMANTS
RETALIATION
TRANSFER

Goff v. Burton, 7 F.3d 734 (8th Cir. 1993). A prisoner sued officials for allegedly transferring him to a maximum security facility in retaliation for his participation in a lawsuit against prison officials. The U.S. District Court found for the prisoner and awarded damages. The defendants appealed. The court of appeals, reversing and remanding, found that the fact that an impermissible retaliatory motive may have played a factor in the transfer would not establish a claim absent proof that discipline would not have been imposed "but for" the unconstitutional retaliatory motive. The court also found that the standard of "some evidence" for reliability of a confidential informant did not require an independent assessment of the credibility of witnesses. (John Bennett Correctional Center, Fort Madison, Iowa)

U.S. Appeals Court
EVIDENCE
PUNISHMENT
RULES

Goff v. Dailey, 991 F.2d 1437 (8th Cir. 1993). An Iowa inmate brought a Section 1983 action against a prison superintendent and correctional officer, alleging they violated his constitutional rights through a prison disciplinary process. The U.S. District Court granted the inmate some relief, and both parties appealed. The appeals court, affirming in part and reversing in part, found that the inmate was not deprived of his First Amendment rights when a disciplinary committee found that he violated a rule against verbal abuse by making crude personal statements about a correctional officer in the presence of several other prisoners. The prison had a legitimate penological interest in punishing an inmate for mocking and challenging a correctional officer. In addition, the disciplinary committee did not violate the inmate's right to due process by using "some evidence" as the standard of proof for its factual determination at the disciplinary hearing. (Clarinda Correctional Facility, Iowa)

U.S. District Court
RETALIATION

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
DUE PROCESS
EVIDENCE

Harms v. Godinez, 829 F.Supp. 259 (N.D.Ill. 1993). An inmate brought a Section 1983 action against officers at a state correctional facility, seeking money damages and declaratory and injunctive relief. The district court found that the inmate's due process rights were not violated by imposition of discipline based on a one-in-six chance of actual guilt concerning stolen property found in the work area containing the inmate and five others. (Stateville Correctional Facility, Illinois)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

Hrbek v. Nix, 12 F.3d 777 (8th Cir. 1993). An inmate brought a petition for writ of habeas corpus, alleging that a prison disciplinary committee denied him due process when it disciplined 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
DUE PROCESS
NOTICE

Hughes v. Lee County Dist. Court, Iowa, 9 F.3d 1366 (8th Cir. 1993). A state prisoner brought a writ of habeas corpus. The U.S. District Court issued an order denying the petition, and the prisoner appealed. The appeals court, affirming the decision, found that the due process rights of the prisoner had been satisfied by giving him 24-hour advance notice of a disciplinary proceeding, even though the state had allegedly violated its own guidelines calling for giving of notice within 24 hours of filing of an incident report. The provision that was violated was more liberal to prisoners than required under the Constitution, and therefore, the state was not penalized. (Iowa State Penitentiary)

U.S. District Court
DUE PROCESS
INFORMANTS

Hyson v. Neubert, 820 F.Supp. 184 (D.N.J. 1993). An inmate sued prison officials under Section 1983 alleging violation of due process in a prison disciplinary hearing that resulted in his being sanctioned with fifteen days detention, 365 days administrative segregation, and 330 days loss of commutation time. The prison officials moved for summary judgment. The district court found that the inmate's due process rights were violated in disciplinary proceedings when the principal testimony against the inmate was information developed from confidential informants who had no prior history of providing reliable information and had substantial self-interest in being perceived as helpful to authorities. No extrinsic evidence corroborated their stories. The court noted that when the principal testimony against an inmate in disciplinary proceedings is information developed from a confidential informant, due process requires that the record contain some factual information confirming the reliability of either the informant or his information. Furthermore, the record should contain the informant's statement, whether written or as reported, in language that is factual rather than conclusory so that the tribunal can determine by the statement's specificity that the informant spoke with personal knowledge. The court also found that the inmate's success in having the original decisions reversed by writing a letter to the Commissioner of Corrections barred the Section 1983 action for damages, particularly where the primary harm was confinement to administrative segregation. (Bayside State Prison, New Jersey)

U.S. Appeals Court
CONDITIONS OF
SEGREGATION
EXERCISE
FOOD
RESTRAINTS
SEGREGATION

LeMaire v. Maass, 12 F.3d 1444 (9th Cir. 1993). An inmate brought a civil rights action alleging unconstitutional conditions of his imprisonment in a disciplinary segregation unit. The U.S. District Court granted injunctive relief, and the prison superintendent appealed. The appeals court, vacating and remanding, found that "wantonness" in the infliction of deprivations on the inmate, which had to be established in order to prove cruel and unusual punishment, consisted of acting maliciously and sadistically for the very purpose of causing harm, rather than merely acting with deliberate indifference. In addition, none of the challenged practices, including controlled feeding status, use of restraints in showers, curtailment of outside exercise privileges, use of quiet cells, use of in-cell restraints, and removal of clothing, were unnecessary or imposed on the inmate maliciously or sadistically for the purpose of causing harm. (Oregon State Prison)

U.S. Appeals Court
DUE PROCESS
URINE TEST

Mahers v. Harper, 12 F.3d 783 (8th Cir. 1993). An inmate brought a Section 1983 action against prison officials. The U.S. District Court denied the officials' motion for summary judgment, and they appealed. The appeals court, reversing and remanding with directions, found that the inmate's due process right not to be disciplined for a positive urine test for marijuana under a rule prohibiting possession of dangerous contraband was not clearly established at the time of the disciplinary proceedings and, thus, the officials were entitled to qualified immunity. (Iowa State Penitentiary)

U.S. Appeals Court
DUE PROCESS
WITNESS

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. (Minnesota Correctional Facility, Oak Park Heights, Minnesota)

U.S. District Court
DISCIPLINARY
PROCEDURES
PUNISHMENT

Nicholson v. Moran, 835 F.Supp. 692 (D.R.I. 1993). A state prisoner brought a civil rights action following discipline. On remand from the court of appeals, the district court found that the deputy warden's policy of automatically initiating a charge of providing false information against any inmate who alleges an assault by a correctional officer did not violate the First Amendment right to petition. The policy initiates a charge whenever the allegation does not result in initiation of criminal charges against the officer or the provision of sufficient evidence to substantiate the allegation. The policy of punishing prisoners for providing false information is not unconstitutional on its face when conducted according to the dictates of procedural due process and the Morris Rules. However, it was found that there was no substantial evidence to support a finding that the prisoner provided false information. (Adult Correctional Institute, Cranston, Rhode Island)

U.S. District Court
CRIMINAL CHARGES
VISITS

Percy v. Jabe, 823 F.Supp. 445 (E.D. Mich. 1993). An inmate and his visitor brought a civil rights action against prison officials who placed the visitor on a permanent visitor restriction list when the inmate was found guilty of possessing crack cocaine after a visit. The district court found that the prison officials did not violate the inmate's right to due process in adjudicating his substance abuse charge in a prison misconduct proceeding without bringing criminal charges. The fact that officials chose not to invoke criminal sanctions against the inmate or visitor involved in the incident had no significance regarding the accuracy of the determination that the inmate abused crack cocaine after a visit. In addition, placing the visitor on a restricted list did not violate the inmate's or the visitor's constitutional rights. The restriction was not an irrational or exaggerated response by officials, and even if the inmate had a protected liberty interest in visitation, it would be subject to reasonable restrictions. (Michigan)

U.S. District Court
DRUG TEST
EVIDENCE

Ransom v. Davies, 816 F.Supp. 681 (D.Kan. 1993). An inmate brought an action against prison officials challenging the imposition of discipline based on a single positive urinalysis result. The district court found that requests for injunctive relief preventing prison officials from relying on a single urinalysis in disciplinary proceedings were mooted by a change in the testing policy calling for a confirmatory second test on positive test results. Also, it was not clearly established at the time of the inmate's disciplinary proceeding that the inmate had a right to a second urinalysis test as part of his defense or that the particular test used for the inmate required a confirming test result before it was sufficiently reliable to use in a prison disciplinary action, so that the prison officials were qualifiedly immune from the civil rights action. (Lansing Correctional Facility, Lansing, Kansas)

- U.S. District Court
DUE PROCESS
PROCEDURES
- Richardson v. Van Dusen, 833 F.Supp. 146 (N.D.N.Y. 1993). An inmate brought a Section 1983 action alleging violation of his due process rights. The district court found that corrections officers did not deprive the inmate of due process by refusing to allow him to be present when other inmates testified at his disciplinary hearing. The inmates and witnesses had allegedly participated in, and provoked attacks on, prison guards in retaliation for the death of another prisoner. Therefore, the decision not to allow the inmates to be present was motivated by penological concerns for prison safety. (Coxsackie Correctional Facility, New York)
- U.S. Appeals Court
INFORMANTS
PLACEMENT IN
SEGREGATION
SEGREGATION
- 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
WITNESS
- Silva v. Casey, 992 F.2d 20 (2nd Cir. 1993). An inmate brought a Section 1983 action against prison officials for their alleged violation of his constitutional rights concerning a prison disciplinary hearing. The U.S. District Court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the failure to call other inmates involved in an altercation with the prisoner as witnesses in the disciplinary action did not violate the prisoner's due process rights. The other inmates had previously indicated their disinclination to testify and prison officials had no power to confer immunity or to otherwise force them to testify. The assistant assigned to act as the inmate's surrogate had no duty to go beyond the bounds of the inmate's specific instructions in interviewing witnesses and marshaling evidence on the inmate's behalf. (Green Haven Correctional Facility, New York)
- U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
PLACEMENT IN
SEGREGATION
- Smith v. Farley, 858 F.Supp. 806 (N.D. Ind. 1993). A pro se prisoner filed for a writ of federal habeas corpus challenging the constitutionality of a state prison disciplinary action taken against him. The district court found that the hearing procedures and a determination of guilt did not violate the prisoner's due process rights. The placement of the prisoner in disciplinary segregation prior to the hearing on the prison disciplinary charge for alleged drug trafficking inside the prison did not violate the prisoner's due process rights. The disciplinary segregation served was credited toward the period of disciplinary segregation imposed following the hearing board determination. (Indiana State Prison)
- U.S. Appeals Court
SEGREGATION
- 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)
- U.S. Appeals Court
ASSISTANCE
PUNISHMENT
RETALIATION
- Smith v. Sumner, 994 F.2d 1401 (9th Cir. 1993). A state prison inmate brought a Section 1983 action against prison officials, alleging violations of his constitutional rights resulting from unreasonable restrictions on visitation, denial of his request for a privately retained attorney in a prison disciplinary action, denial of medical treatment, and denial of hobby craft privileges. The U.S. District Court entered judgment for prison officials on all issues, and the inmate appealed. The appeals court, affirming the decision, found that inmates in the Nevada state prison were entitled to hire attorneys to represent them in disciplinary proceedings. The finding that prison officials had not violated the inmate's constitutional rights by unreasonably restricting visitation, denying medical treatment, and denying hobby craft privileges in retaliation for the inmate's refusal to plead guilty to a charged disciplinary infraction was supported by evidence. The inmate or his visitors caused the delay in visitations by failing to fill out proper forms, failing to fill out forms correctly, or failing to abide by prison regulations. Hobby craft privileges were rarely granted to those in the inmate's unit because the fire marshal or health inspector would not allow it. The inmate failed to offer evidence of retaliatory conduct with respect to the alleged denial of medical treatment. (Nevada State Prison)

U.S. District Court
DUE PROCESS
INFORMANTS
PROCEDURES
WITNESS

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

U.S. District Court
DRUG TESTING
DUE PROCESS
EVIDENCE

Sullivan v. Ford, 828 F.Supp. 480 (E.D. Mich. 1993). An inmate filed a pro se civil rights complaint for prison authority's alleged violation of his constitutional rights concerning a prison disciplinary hearing. The district court found that professional hearing officers who presided over a disciplinary hearing were protected by judicial immunity from damages liability for their actions in adjudicating major misconduct charges. In addition, the failure to allow the inmate charged with substance abuse based on the results of a urine test to present evidence that, some years in the past, prior to modification of the test, the inmate's use of ibuprofen might have yielded a false positive result did not violate the inmate's due process right to present evidence on his behalf. Evidence showed that problems with false positives had been corrected. (State Prison of So. Mich., Jackson)

U.S. Appeals Court
CRIMINAL CHARGES
DOUBLE JEOPARDY
GOOD TIME

U.S. v. Newby, 11 F.3d 1143 (3rd Cir. 1993) U.S. cert. denied 115 S.Ct. 111. Inmates were convicted before the U.S. District Court of knowingly and willfully impeding and interfering with a federal prison guard, and one defendant was additionally convicted of assaulting a federal prison guard. The inmates appealed. The court of appeals, affirming the decision, found that the prison disciplinary sanction of loss of good time credits was not so grossly disproportionate to the goal of maintaining order and discipline in prison so as to constitute a "punishment" within the meaning of the double jeopardy clause, and to bar subsequent prosecution. The court also found that the prisoners' loss of good time credits as a disciplinary sanction for assaulting prison guards could not be considered a mitigating factor in sentencing the prisoners after their conviction. The fact that the prisoners were sanctioned administratively did not show they were morally less culpable of the charged crime. (New Jersey Federal Prison)

U.S. Appeals Court
CONDITIONS OF
SEGREGATION
LENGTH OF
SEGREGATION
PLACEMENT IN
SEGREGATION

White v. Nix, 7 F.3d 120 (8th Cir. 1993). An inmate brought a civil rights suit against prison officials arising from his confinement in a screened prison cell for eleven days. The U.S. District Court entered judgment for the officials, and the inmate appealed. The court of appeals, affirming the decision, found that the confinement of the inmate in the screened cell for eleven days when he was issued a disciplinary notice was not cruel and unusual punishment so as to deprive the inmate of his Eighth Amendment rights. The cell was equipped with a toilet, sink with hot and cold water, bed, and table, and was wired for cable television, although the furniture was bolted to the floor and screen mesh covered the bars of the cell. If the inmate had complained about the condition of the cell, he would have been provided with cleaning materials in order to correct the alleged unsanitary conditions. (Iowa State Penitentiary, Fort Madison, Iowa)

U.S. District Court
DUE PROCESS
WITNESS

Young v. Freer, 829 F.Supp. 32 (N.D.N.Y. 1993). An inmate brought a Section 1983 action claiming denial of due process because he was not permitted to call certain witnesses at a prison disciplinary proceeding. The district court found that the hearing officer who presided over the prison disciplinary hearing did not violate the inmate's due process rights. The testimony of seven of fourteen witnesses the inmate sought to call in his defense would have been cumulative and, thus the inmate could not call those witnesses. The officer properly weighed the prison's interest in timely adjudication against the inmate's interest in fair adjudication. (New York)

1994

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
EQUAL
PROTECTION
EVIDENCE
PLACEMENT IN
SEGREGATION
REVIEW OF
SEGREGATION

Batista v. Kelly, 854 F.Supp. 186 (W.D.N.Y. 1994), affirmed, 50 F.3d 2. An inmate brought a Section 1983 action against state prison officials alleging denial of constitutional rights in connection with prison disciplinary proceedings. The officials moved for summary judgment. The district court granted the motion, finding that the disciplinary hearing officer's finding that the inmate was guilty of weapon and smuggling charges was supported by sufficient evidence to satisfy due process requirements. The failure to follow prison regulations regarding disciplinary proceedings did not, in itself, violate the inmate's due process rights. Furthermore, the administrative confinement pending the prison disciplinary hearing did not violate the inmate's substantive due process rights. After discovering a concealed razor blade among the inmate's belongings, a corrections officer had reasonable grounds to believe that the inmate should be confined to his cell as he was

an immediate threat to the safety, security, and order of the prison and the officer took reasonable steps to confine the inmate. A prison official's failure to decide the inmate's appeal from the disciplinary hearing until the day his administrative confinement expired did not deny the inmate due process or equal protection, as the state is not constitutionally required to give inmates the right to avoid administrative confinement pending appeal. (Attica Correctional Facility, New York)

U.S. District Court
CRIMINAL CHARGES
DOUBLE JEOPARDY
GOOD TIME

Bellum v. Vose, 848 F.Supp. 1065 (D.Mass. 1994). An inmate sued for reinstatement of good-time credits and expungement of disciplinary confinement from his prison record. The district court found that the inmate's acquittal, under the "reasonable doubt" standard, of criminal assault and battery charges arising out of his altercation with another inmate did not mandate the reinstatement of good-time credits previously revoked based on disciplinary charges arising out of the same incident. The lower standard of proof applied at the disciplinary hearing, and the disciplinary charges, including fighting and disrupting order, differed from the criminal charges. In addition, requiring the inmate to defend the disciplinary charges against him prior to the prosecution of the criminal assault charges arising out of the same incident did not impermissibly burden the inmate's Fifth Amendment right against self-incrimination, by allegedly leading the inmate to remain silent at the disciplinary proceeding in order to assert his Fifth Amendment rights at the criminal trial. The inmate was not required to make an impermissible choice between defending himself at the disciplinary proceeding and preserving his Fifth Amendment privileges at trial. (Maximum Security Prison, Cedar Junction, Walpole, Massachusetts)

U.S. Appeals Court
DUE PROCESS
NOTICE
PROCEDURES

Berry v. Bunnell, 39 F.3d 1056 (9th Cir. 1994). In an inmate's civil rights action against prison officials, the officials' motion for a directed verdict was granted by the U.S. District Court and the inmate appealed. The appeals court, affirming the decision, found that prison officials did not violate the inmate's due process rights when they issued rules violations reports and proceeded with disciplinary charges against him, absent evidence that they failed to give the inmate a written notice of the charges, to allow him to call witnesses and present evidence, or to provide him with a written explanation of the disciplinary action. (California)

U.S. Appeals Court
DUE PROCESS
RETALIATION

Black v. Lane, 22 F.3d 1395 (7th Cir. 1994). An Illinois inmate filed a Section 1983 suit against prison officials, alleging violation of his civil rights in the form of harassment, false disciplinary charges, segregation, and other punishment. A hearing was held on the issues of damages. The U.S. District Court granted the inmate partial relief, but dismissed numerous defendants. The inmate appealed. The appeals court, vacating and remanding, found that due process requires not only that certain procedural safeguards be satisfied at a prison disciplinary hearing, but also that a disciplinary decision be supported by "some" evidence. The inmate stated a claim for violation of his procedural due process rights by alleging that prison officials repeatedly and systemically filed and approved false and unjustified disciplinary charges, which resulted in segregation and a loss of good time. The court noted that issuing false and unjustified disciplinary charges can amount to a violation of an inmate's substantive due process rights if the charges were in retaliation for the exercise of a constitutional right. (Menard Correctional Center, Illinois)

U.S. District Court
DUE PROCESS
PROCEDURES
SEGREGATION

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. The court also found that the inmate had no right protecting him from being charged with a disciplinary offense. Evidence that the inmate admitted to the disciplinary board that he was approaching a staff member while holding a deadly weapon in such a way that he could stab someone, along with the officer's testimony, was more than the minimal amount required by due process to convict the inmate of a prison disciplinary infraction. The inmate had no right to appeal the disciplinary conviction. (Northwest Correctional Center, Tiptonville, Tennessee)

U.S. District Court
DUE PROCESS
PLACEMENT IN
SEGREGATION
PRETRIAL
DETAINEES

Collazo-Leon v. U.S. Bureau of Prisons, 855 F.Supp. 530 (D. Puerto Rico 1994). A pretrial detainee who was placed in solitary confinement as a disciplinary sanction applied for a writ of habeas corpus. The district court granted the application, finding that the disciplinary segregation imposed on the pretrial detainee as a sanction for an escape attempt constituted punishment and served no legitimate regulatory purpose, in violation of substantive due process. (M.D.C. Guaynabo, Puerto Rico)

U.S. District Court
DUE PROCESS
INFORMANTS
LIABILITY
RETALIATION
SEGREGATION

Cook v. Lehman, 863 F.Supp. 207 (E.D. Pa. 1994). A state prisoner brought a civil rights action against correctional officers, a prison official, and a hearing officer who presided over his disciplinary proceedings, claiming that his First and Fourteenth Amendment rights were violated. After a jury returned a verdict in the prisoner's favor, a motion for judgment as a matter of law was filed. The district court found that there was some evidence of sufficient quantity and quality upon which the hearing officer could constitutionally base her decision, even though the hearing officer did not consider the testimony of a confidential informant. Neither the correctional officers nor the prison official could be held liable for the hearing officer's alleged failure to independently access the credibility and reliability of the confidential informant. In addition, the correctional officers and the prison official did not violate the prisoner's First Amendment rights by placing him in restrictive confinement in response to the present or threatened disturbance, notwithstanding the prisoner's contention that such confinement was in retaliation for the fact that he had spearheaded a successful peaceful protest of prison medical care. The officials had a legitimate concern based on subsequent reports that a protest could develop into a riot and that the prisoner could take a leadership role based on his prior activity. (State Correctional Institution, Graterford, Pennsylvania)

U.S. District Court
DOUBLE JEOPARDY
PUNISHMENT

Garrity v. Fiedler, 850 F.Supp. 777 (E.D. Wis. 1994). An inmate who violated prison rules by passing a note to a visitor soliciting commission of a burglary petitioned for a writ of habeas corpus. He alleged that he was subjected to multiple punishments in violation of double jeopardy when prison disciplinary proceedings resulted in extending his mandatory release date, and when he was sentenced to three additional years in prison after he pled guilty to a solicitation charge. The district court found that, under Wisconsin law, prison disciplinary measures were not "punishment" for double jeopardy purposes, as their "primary" purpose is not punitive. (Wisconsin State Penitentiary)

U.S. District Court
CONDITIONS OF
SEGREGATION
DUE PROCESS
INFORMANT
WITNESS

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 deprivation of the inmate's due process rights during a disciplinary hearing could not be the basis for the Section 1983 civil rights claim, even though the determination of guilt was ultimately overturned. The guilty verdict was based on some evidence and the inmate was credited for time served in the special housing unit. The court also found that one prison hearing officer was not entitled to qualified immunity arising from a violation of the inmate's due process rights when nothing more than conclusory reasons were given for refusing to allow the inmate to call witnesses. Furthermore, no assessment was conducted as to the reliability of a confidential informant, and the officer relied solely on a third-party assessment as to the informant's credibility. Additionally, 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
DUE PROCESS
EVIDENCE
LIABILITY
WITNESS

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

U.S. Appeals Court
DUE PROCESS

Grillo v. Coughlin, 31 F.3d 53 (2nd Cir. 1994). An inmate brought a Section 1983 civil rights suit alleging that his due process rights were violated when altered documents were used in a prison disciplinary hearing. The U.S. District Court entered summary judgment in favor of the defendants and the inmate appealed. The appeals court found that whether the inmate's procedural due process rights were violated was a fact question which precluded summary judgment. The court also found that a hearing officer did not violate the inmate's due process rights in the proceedings by consulting with a more experienced hearing officer on the issue of whether one needed to request that specific drugs be tested for. (New York State's Clinton Correctional Facility)

U.S. District Court
PROCEDURES
DISCRIMINATION
RETALIATION

Hadley v. Peters, 841 F.Supp. 850 (C.D.Ill. 1994). A state prisoner brought a pro se civil rights action against correctional officials. On motion to dismiss, construed as a motion for summary judgment, the district court found that the inmate received all procedural safeguards mandated by the Constitution in connection with a charge of attempting to engage the assistance of a prison nurse in an effort to bribe a politician. He was given notice of the charges, allowed to contest the charges, was granted a continuance, requested no witnesses, and received an adjustment committee summary. There was insufficient showing that the disciplinary action was motivated by racial or retaliatory animus. Allegations of false disciplinary reports do not state a claim where due process is afforded. (Graham Correctional Center, Illinois)

U.S. District Court
ASSISTANCE
DUE PROCESS
NOTICE
PROCEDURES

Hameed v. Mann, 849 F.Supp. 169 (N.D.N.Y. 1994). An inmate sued prison officials under Section 1983 alleging violations of the Fifth and Fourteenth Amendments as a result of disciplinary proceedings. After judgment in favor of prison officials, the inmate moved to set aside a verdict of the jury and to enter judgment notwithstanding the verdict or for a new trial. The district court denied the motions. It found that the misbehavior report given to the inmate provided him with sufficient notice of charges against him, even though the report was identical to misbehavior reports given to other inmates involved in the same incident. In addition, the prehearing briefing of the hearing officer by a prison official did not render the hearing officer not impartial as required by the due process clause. It was necessary to brief the hearing officer because he had been sent from another facility to help conduct hearings and the hearing officer did not even know why he had been sent to the facility. There was no indication that the meeting between the prison official and hearing officer played any role in the hearing officer's partiality. The court also found that the inmate was not entitled to an employee assistant to prepare for the prison disciplinary hearing. The inmate had been given the required minimum hours to do his own investigative work. Evidence established that he had over 27 hours from the time he received his misbehavior report until he was confined to keeplock status prior to the date of the hearing. The inmate's right to present documentary evidence was not violated as a result of the hearing officer's denial of a request for investigative reports. The hearing officer denied the request because the reports requested had confidential information such as names of informants and information on certain inmates protected by the Freedom of Information Law. The hearing officer gave the inmate an option to contact the superintendent of the prison to pursue the document request and the inmate declined the offer. (Shawangunk Correctional Facility, New York)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
PUNISHMENT

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

U.S. District Court
DUE PROCESS

Heimermann v. McCaughtry, 855 F.Supp. 1027 (E.D. Wis. 1994). An inmate sought leave to proceed in forma pauperis in a pro se civil rights action against prison officials. The prison officials moved for summary judgment. The district court granted the motion, finding that the inmate's due process rights were not violated during a disciplinary hearing where the disciplinary committee listened to the inmate's testimony and the inmate was allowed to present witnesses. Although the inmate did not have a chance to cross-examine witnesses, there was no absolute right for him to cross-examine witnesses at a prison hearing which did not involve parole revocation. In addition, the committee had sufficient evidence to find the inmate guilty of threats and disrespect. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Henderson v. U.S. Parole Com'n., 13 F.3d 1073 (7th Cir. 1994). A federal inmate sought habeas relief in connection with prison disciplinary proceedings. The U.S. District Court denied relief, and the inmate appealed. The appeals court, affirming the decision, found that the hearing officer did not violate due process by failing to disclose or summarize evidence exhibited in a closed session that was considered in reaching the decision. Also, the district court was justified in granting the government's motion to consider those

exhibits in a closed session. The court found the exhibits to be reliable. It was also found that a checklist completed by the discipline hearing officer did not establish that the officer applied an incorrect standard of proof in finding the federal inmate guilty of violating disciplinary rules. The checklist was merely a bureaucratic attempt at uniformity and was not determinative of the standard of evidence used by the officer. Contrary to the inmate's contention, there was no constitutional requirement that the officer apply a "greater weight of the evidence" standard. It was only necessary that the officer's decision was supported by some evidence. (United State Penitentiary, Terre Haute, Indiana)

U.S. District Court
DUE PROCESS
EVIDENCE

Huffman v. McBride, 853 F.Supp. 1095 (N.D.Ind. 1994). An inmate at a state correctional facility filed a habeas corpus petition challenging a determination at a prison disciplinary proceeding that he was guilty of trafficking. The district court found that the inmate's due process rights were violated when he was found guilty of engaging in trafficking based upon his alleged interaction with a correctional officer, in the absence of any evidence satisfying the element of the offense that the article be delivered or received. (Lakeside Correctional Unit, Indiana)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DISCRIMINATION
EVIDENCE

Ivy v. Moore, 31 F.3d 634 (8th Cir. 1994), cert. denied, 115 S.Ct. 760. A prisoner brought a Section 1983 action alleging that employees of the Department of Corrections violated his rights under the Fifth, Eighth, and Fourteenth Amendments. The U.S. District Court entered judgment as matter of law on some of the prisoner's claims and entered judgment in accordance with the jury's verdicts for employees on the prisoner's remaining claims; the prisoner appealed. The appeals court, affirming the decision, found that the chairperson of a disciplinary hearing team was not biased against the prisoner, who was charged with a prison conduct violation for giving false information to a guard, even though the chairperson allegedly recessed the disciplinary hearing and personally investigated the prisoner's alibi defense. The court noted that the investigation was not done to prepare for prosecution of a charge, but rather, took place during a recess in the disciplinary hearing and was undertaken to determine whether the prisoner's alibi defense was, in fact, true. (Missouri Eastern Correctional Center)

U.S. Appeals Court
COUNSEL
DISCIPLINARY
PROCEDURES
DUE PROCESS

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 inmate's due process rights were not violated by the prison's policy of deciding on a case-by-case basis whether the inmate was competent to respond to disciplinary charges and to adequately represent himself, or whether counsel substitute would be provided. In addition, a 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. 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. Appeals Court
COUNSEL
DRUG TEST

Lucero v. Gunter, 17 F.3d 1347 (10th Cir. 1994). An inmate who was subjected to disciplinary sanctions for refusing to undergo urinalysis testing brought a civil rights action against prison officials. The U.S. District Court dismissed the inmate's pro se complaint, and he appealed. The appeals court, affirming in part, reversing in part and remanding, found that the inmate's allegation that prison officials' request that he submit to urinalysis was an unreasonable search under the Fourth Amendment was sufficient to state a civil rights claim. However, the urine samples used by prison officials for drug testing constituted nontestimonial evidence and did not implicate the inmate's Fifth Amendment right against self-incrimination. The inmate's Sixth Amendment right to counsel was not implicated when he was asked by prison officials to submit to urinalysis. (Limon Correctional Facility, Colorado)

U.S. Appeals Court
ASSISTANCE
DUE PROCESS
PROCEDURES

Mays v. Mahoney, 23 F.3d 660 (2nd Cir. 1994). An inmate brought a civil rights action seeking damages for disciplinary action taken against him after the disciplinary decision was reversed due to procedural error. The U.S. District Court entered summary judgment for the hearing officer, and the inmate appealed. The appeals court, reversing and remanding, found that material issues of fact, whether the inmate was informed of and waived his right to an assistant to help him prepare for the disciplinary hearing, the right to appear at the hearing, and the right to call witnesses in his defense, and whether an objectively reasonable hearing officer would have believed that his acts did not violate the inmate's rights, precluded summary judgment for the hearing officer. (Sing Sing Correctional Facility, New York)

U.S. District Court
DUE PROCESS
NOTICE

McCann v. Phillips, 864 F.Supp. 330 (S.D.N.Y. 1994). A former jail inmate brought a civil rights suit against a county sheriff and a correctional facility officer alleging a violation of procedural due process resulting from the inmate's confinement as part of a 24-hour keeplock of his jail tier. The district court found that, under New York law, the inmate had a protected liberty interest with respect to the imposition of the keeplock in connection with the issuance of an infraction notice to the extent that the keeplock was imposed for administrative reasons following a series of incidents in the tier of the facility reserved for inmates with mental health needs. The court found that the inmate was entitled to notice of the reasons for the keeplock and entitled to some meaningful opportunity to be heard. He was deprived of due process where he was neither advised of these rights, nor given an opportunity to make a statement to the officer in charge of confinement. However, the inmate was not deprived of due process when no hearing was held on the charge set forth in the infraction notice, where no determination of the charge was ever made nor any sanction imposed. (Orange County Correctional Facility, New York)

U.S. District Court
DUE PROCESS
PROCEDURES
WITNESS

McConnell v. Selsky, 877 F.Supp. 117 (S.D.N.Y. 1994). A state inmate brought a Section 1983 action alleging violations of his due process rights during the course of disciplinary proceedings. The district court found that the prison hearing officer reasonably determined that a correctional officer's testimony was not necessary in the inmate's disciplinary proceeding. The inmate sought to call the officer for purposes of showing that, although the officer had tested the contraband, he had not found the contraband that was the basis of the charge against the inmate, and the hearing officer denied the request. Documentary evidence already demonstrated that the officer prepared the disciplinary report because the officer who discovered the contraband could not know until the contraband was tested that there had been any violation of prison rules. However, the court found that the hearing officer violated the inmate's due process rights in refusing to either interview the corrections officer who endorsed a disciplinary report prepared by a prison nurse, and who was the officer to whom the nurse had given a note written by the inmate that violated prison regulations, or to appoint a new inmate assistant who could conduct such an interview. The hearing officer's finding that the correctional officer's testimony would be redundant had no basis other than the fact that he endorsed the report. There was also no evidence that the inmate posed a threat to institutional safety, which was another reason cited by the hearing officer as a reason to refuse an interview. Material issues of fact existed as to whether a violation of the inmate's due process rights in the course of the disciplinary proceedings caused any compensable liberty deprivation, precluding summary judgment for the prison hearing officer on the issue of damages in the Section 1983 action. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
WITNESS

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 the prisoner's due process rights were not violated by the exclusion of a witness for the inmate from a disciplinary proceeding for assault. The prisoner received a notice of the charge against him and he had the opportunity to present his views to prison officials. (Texas Department of Criminal Justice)

U.S. District Court
ASSISTANCE
WITNESSES

Nix v. Evatt, 850 F.Supp. 455 (D.S.C. 1994). A prisoner sued various state prison officials under Section 1983, alleging violations of his procedural due process rights in a prison disciplinary hearing. On the officials' motions for summary judgments, the district court found that, at the time of his prison disciplinary hearing, a prisoner in administrative detention had a clearly established constitutional right to sufficiently competent representation, including the right to call witnesses and to receive help from a sufficiently competent inmate representative. Prison officials allegedly involved in depriving the prisoner of this right were not entitled to qualified immunity from the prisoner's Section 1983 claims. Officials who were not involved with the procedural due process claim were not liable. (South Carolina Department of Corrections)

U.S. District Court
DUE PROCESS
EVIDENCE
RECORDS
WITNESS

Parker v. Vose, 875 F.Supp. 954 (D.R.I. 1994). A state prisoner brought a Section 1983 civil rights suit alleging that a prison disciplinary board hearing, during which the inmate was found to have been folding other inmates' clothes in violation of prison policy, did not comply with due process requirements. The district court found that the failure to tape record the proceedings did not violate the inmate's due process rights, even though state law permitted recording upon an inmate's request with tape provided by the inmate. An unsuccessful diligent search was made for the inmate's tape, the inmate did not show a receipt for the tape, and the inmate could not recall the correctional officer who prepared the receipt or placed the tape in storage. In addition, the inmate's due process rights were not violated when the booking for the prison infraction was read to him more than 30 hours after the infraction, given that the charging officer complied with state law by logging the infraction at the end of his shift on the day following the incident and read the booking to the inmate later that evening. The refusal to call witnesses requested by the inmate during the hearing did not violate due process given that relevant material which could have been provided by the witnesses was accepted as true, the remaining testimony was irrelevant, and evidence in the record supported a finding that the inmate was guilty as charged. The inmate was observed folding laundry other than his own, and the inmate was observed discarding a cigarette pack which contained a list of cell numbers corresponding to confiscated bags of folded inmate laundry. (Maximum Security Adult Correctional Institution, Rhode Island)

U.S. District Court
DUE PROCESS

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 pretrial detainee was not denied due process when he was disciplined for throwing a beverage on a jail trustee. Because the detainee confessed his guilt it was unnecessary to provide a hearing or any other procedural due process for the detainee to protest the charges. (Adams County Jail, Illinois)

U.S. District Court
LIBERTY INTEREST
SEGREGATION

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. Appeals Court
DUE PROCESS
PROCEDURES

Reeves v. Pettcox, 19 F.3d 1060 (5th Cir. 1994). A prisoner filed a lawsuit, pro se and in forma pauperis, complaining that a disciplinary proceeding had violated his constitutional right to due process. The U.S. District Court ruled that the prisoner had waived his rights. The prisoner appealed. The appeals court found that the defendant had a due process right to be informed in advance of conduct that would be deemed violative of regulations. The prisoner could not be subjected to discipline for violation of a solitary confinement requirement that trays be left within the confines of the cell because the prisoner had no notice of that rule in advance of committing the infraction. The court also ruled that the prisoner did not waive the right to be informed that he was required to keep his food tray within his cell. The prisoner had pleaded guilty to the offense and it was claimed that the plea constituted a waiver of all nonjurisdictional claims. However, the defendant had not been represented by an attorney, and could not be expected to know the waiver effect of a guilty plea. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
EVIDENCE
SEGREGATION

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 appealed. The appeals court, reversing and remanding, found that the prison officials did not violate the due process rights of the prisoner by not releasing him from segregation promptly upon determining that the white powder confiscated from his prison cell was not cocaine. Later discovered evidence did not affect the validity of the original commitment, which had been made in accordance with prison procedures and in compliance with procedural due process requirements. The inmate violated a prison rule by possessing a prescription drug, and the way it was packaged indicated that the prisoner intended to sell the drug as cocaine to other inmates. The court also found that the prison officials' failure to release the prisoner from segregation, following the determination that the substance was not

cocaine, did not constitute an infliction of cruel or unusual punishment prohibited by the Eighth Amendment. (South Dakota State Penitentiary)

U.S. District Court
RETALIATION

Riley v. Church, 874 F.Supp. 765 (E.D. Mich. 1994). A prisoner sued a corrections officer under Section 1983 for violations of his rights under the First and Fourteenth Amendments. On the correction officer's motion for summary judgment, the district court found that even though the prisoner raised a genuine issue of material fact regarding whether the corrections officer planted contraband in his cell to support false misconduct charges, he failed to prove that retaliation for his filing of a grievance against another corrections officer was the substantial and motivating factor for the alleged planting of the contraband. (Michigan Department of Corrections)

U.S. Appeals Court
DUE PROCESS

Rowe v. DeBruyn, 17 F.3d 1047 (7th Cir. 1994). An inmate filed a Section 1983 action alleging that the prison's policy of denying prisoners the right to raise self-defense as a complete defense in disciplinary hearings deprived him of due process. The U.S. District Court granted the prison officers' motion for summary judgment, and the inmate appealed. The appeals court, affirming the decision, found that the prison's policy did not infringe the inmate's substantive due process rights. The policy did not deprive the inmate of procedural due process because the inmate was allowed to argue and present evidence on the issue, and self defense could be considered as a circumstance mitigating the penalty. (Indiana Reformatory at Pendleton)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
WITNESS

Russell v. Selsky, 35 F.3d 55 (2nd Cir. 1994). A state inmate brought a civil rights action against an initial hearing officer and an officer who served as both a review officer and a hearing officer at a subsequent hearing in a disciplinary proceeding. The U.S. District Court granted summary judgment in part on qualified immunity grounds and the inmate appealed. The appeals court found that the first hearing officer did not violate any clearly established constitutional or statutory right of the inmate in failing to call suggested witnesses and was entitled to qualified immunity. The officer had provided the inmate with an explanation for his action which the inmate did not appeal, and evidence at the hearing indicated that the officer reasonably regarded the proffered testimony of two witnesses as duplicative. The court found that there was no clearly established right not to have the review officer also serve as the hearing officer. Although due process requires that a disciplinary hearing be impartial, it was not clearly established that allowing the same officer to fill both positions violated this right. (Green Haven Correctional Facility, New York)

U.S. District Court
DUE PROCESS
EVIDENCE
INFORMANTS

Sales v. Murray, 862 F.Supp. 1511 (W.D.Va. 1994). A prisoner brought a pro se civil rights action alleging that his constitutional rights were violated. The district court found that the hearing officer in the prisoner's hearing for possession of weapon charges was impartial. The prisoner alleged that the officer was not impartial because she heard fifteen cases a day, she served as a former correctional officer, and she had a conviction rate of 99.5%. Evidence showed that the officer was selected and appointed with the approval of the regional administrator, that the officer had adequate knowledge of disciplinary process, and that the officer met qualification and training requirements set by the deputy director of institutions. In addition, a one-person tribunal was not constitutionally inadequate to hear charges that the prisoner was in possession of a weapon. Furthermore, the memorandum addressing disciplinary charges for "possession" of weapons by a prisoner did not violate minimal due process by permitting charging of an innocent prisoner with possession, where the policy in the memorandum provided that a prisoner could not be charged solely on the fact that an item was found in the vicinity of his living area if other persons had access to the area. The hearing officer's determination that the prisoner was in possession of a weapon was based on the fact that the knife was constructed of materials readily available to the prisoner, the weapon was found in the prisoner's area of control, and confidential statements from other prisoners linked the prisoner to the weapon. (Staunton Correctional Center, Virginia)

U.S. District Court
DRUG TEST
DUE PROCESS
GOOD-TIME
RECORDS

Scaife v. Wilson, 861 F.Supp. 1027 (D.Kan. 1994). An inmate filed a civil rights complaint against prison officials alleging he was denied due process in prison disciplinary proceedings. The district court found that negligence in preparing an inconsistent administrative segregation report and a disciplinary report, based on a breakdown in communication between prison staff, is not actionable under Section 1983. In addition, the inmate was not denied due process at the disciplinary hearing, even though prison regulations provide that the reporting officer be present at the hearing to give testimony. The reporting officer was not present at the hearing because he was no longer employed by the Kansas Department of Corrections at the time of the hearing. The inmate was found guilty on the basis of the officer's sworn statement and the inmate's own testimony, and the inmate did not allege that prejudice resulted from the officer's absence. The inmate was not subjected to additional sanction without due process when he lost 30 days of good time during the quarter in which he was sanctioned to 15 days of solitary confinement for refusing to provide a urine sample for drug testing. Regulations authorize

the loss of up to 50% of discretionary credits available quarterly for a Class I offense. The inmate lost no good time already credited. (El Dorado Correctional Facility, El Dorado, Kansas)

U.S. Appeals Court
DUE PROCESS
INFORMANTS
WITNESS

Turner v. Caspari, 38 F.3d 388 (8th Cir. 1994). The U.S. District Court entered a judgment that state prison authorities had violated a prisoner's due process rights and the authorities appealed. The appeals court, reversing and remanding, found that the prison officials had a legitimate penological concern supporting their determination not to allow live testimony in a disciplinary proceeding. There was fear that witnesses would be intimidated by the prisoner, who had been charged with breaking the jaw of a fellow prisoner, and the testimony witnesses would have given would be cumulative. In addition, the determination of the reliability of a confidential informant in a prisoner discipline case is not required to be made where there is some independent evidence corroborating the claims of the informant. (Missouri Eastern Correctional Center)

U.S. District Court
DRUG TEST
DUE PROCESS
EVIDENCE
WITNESS

Wade v. Farley, 869 F.Supp. 1365 (N.D. Ind. 1994). An inmate petitioned for habeas corpus relief challenging the Conduct Adjustment Board disciplinary proceedings. The district court found that sufficient probable cause existed to require the inmate to submit to an urinalysis drug test, where a prison official smelled burning marijuana emanating from the inmate's room. In addition, the hearing officer at the disciplinary proceeding sufficiently explained why he refused to call three of the inmate's four requested witnesses who would have testified that marijuana cigarettes had been placed in a common hot water pot for the purpose of explaining the inmate's positive urinalysis test for marijuana. The very high amount of drugs in the inmate's system negated any reasonable inference that consumption of water caused the positive test results, and the defendant admitted he knew he would test positive and attempted to use another's urine in the test. (Indiana State Prison, Michigan City, Indiana)

U.S. Appeals Court
WITNESSES

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. Appeals Court
DUE PROCESS
LIBERTY INTEREST
PLACEMENT IN
SEGREGATION

Walker v. Sumner, 14 F.3d 1415 (9th Cir. 1994). An inmate sued prison officials under Section 1983 alleging violations of the Eighth and Fourteenth Amendments. The U.S. District Court granted summary judgment in favor of the inmate on the claim that his right to procedural due process had been violated because he had been placed in disciplinary segregation before his disciplinary hearing. The Court awarded the inmate \$800 in damages against two members of the classification committee. Both parties appealed. The appeals court affirmed, finding that the Nevada Department of Prison's Code of Penal Discipline created a "liberty interest," protected by the due process clause, for inmates to remain free from arbitrary placement in disciplinary segregation. The Code contained a detailed list of substantive offenses for which punishment could be imposed and described mandatory provisions requiring the prison to provide notice and a hearing to inmates and detailed requirements for the hearing process itself. (Nevada State Prison)

U.S. District Court
PUNISHMENT
RECORDS

White v. Kane, 860 F.Supp. 1075 (E.D.Pa. 1994), affirmed, 52 F.3d 319. A prisoner brought a civil rights action against a hearing examiner who had found him in violation of a prison regulation prohibiting keeping of contraband in his cell. The district court found that no jury could have reasonably found that the report issued by the hearing officer did not adequately describe the reasons for the imposition of a penalty following the discovery of a \$100 bill in the prisoner's cell. In addition, the punishment for the violation of a rule prohibiting contraband in cells did not violate the prisoner's constitutional rights and no jury could have found that the imposition of 45 days of restricted housing was excessive. A sanction of 45 days of restricted housing was within the range of sanctions permitted under the administrative directive for the violation in question, and a statement set forth the evidence on which the examiner was relying on finding the prisoner guilty. (State Correctional Institute, Graterford, Pennsylvania)

U.S. District Court
DUE PROCESS
EVIDENCE

Wilkins v. Roper, 843 F.Supp. 1327 (E.D. Mo. 1994). An inmate brought a Section 1983 action against various officials of a correctional center, claiming denial of due process at disciplinary hearings. On the defendants' motion for summary judgment, the district court found that the refusal to allow the inmate to introduce two documents at the disciplinary hearings did not deny him due process because the documents would not have altered the result of the hearings. The inmate was present at the hearings and submitted a written

statement, and the inmate had a fair opportunity to present a defense. (Potosi Correctional Center, Missouri)

U.S. District Court
RETALIATION

Williams v. Kling, 849 F.Supp. 1192 (E.D.Mich. 1994). A prisoner brought a Section 1983 action against prison officials claiming that he was denied a full and fair grievance process and that prison officials retaliated against him for filing the grievance. The district court found that the Michigan law affording prisoners five levels of administrative review of grievances satisfied procedural due process requirements. In addition, the prisoner did not state an actionable civil rights claim based on the loss of personal papers during a shakedown search as the prisoner had an adequate postdeprivation remedy under state law. Finally, the prisoner did not show that the intent to retaliate was the substantial factor behind the decision to issue a misconduct ticket. The prison official met her burden of showing a legitimate reason for the issuance of a misconduct ticket where her claim that the prisoner was hostile and insolent was un rebutted. (State Prison of Southern Michigan)

1995

U.S. District Court
EQUAL PROTECTION
SEGREGATION
TRANSFER

Abrazinski v. Dubois, 876 F.Supp. 313 (D.Mass. 1995). A Maine inmate who was transferred to Massachusetts under the New England Interstate Corrections Compact brought a Section 1983 action against prison officials. On the defendants' motion for partial summary judgment, the district court found that the Compact did not require Massachusetts to apply Maine's procedures for a disciplinary hearing on alleged violation of Massachusetts prison rules. In addition, application of Massachusetts disciplinary rules did not violate equal protection as the inmate had no right to remain in the custody of Maine officials, was rightfully in custody of the Massachusetts Department of Corrections, and thus was subject to treatment equal with other Massachusetts inmates. The court also found that the inmate's sentence of two years at the Department Disciplinary Unit (DDU) for violation of a prison rule did not violate a Massachusetts statute limiting confinement in the "isolation unit" to no more than 15 days. Although DDU was a segregation unit it allowed regular, though brief, contact with other inmates, access to books, and after a sufficient period of good behavior, social visits, telephone calls and radio. (Massachusetts Correctional Institution at Cedar Junction)

U.S. Appeals Court
PROCEDURES
WITNESS

Banuelos v. McFarland, 41 F.3d 232 (5th Cir. 1995). An inmate brought a civil rights action against prison officials, alleging his due process rights were violated at a disciplinary hearing. The U.S. District Court dismissed the claim as frivolous and the inmate appealed. The appeals court, affirming the decision, found that procedures at the prison disciplinary hearing satisfied due process requirements, despite the inmate's claim that he was not given an opportunity to call witnesses. The inmate was given advance notice of the hearing, there was written documentation of the punishment and testimony about why the punishment was given, the inmate did not call any witnesses at the hearing, and did not allege he made an oral request to the hearing officer to call witnesses. (Wynne Correction Facility, Huntsville, Texas)

U.S. District Court
NOTICE

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
GRIEVANCE

Bradley v. Hall, 64 F.3d 1276 (9th Cir. 1995). A state prisoner filed a § 1983 action against the director of the Oregon Department of Corrections challenging the constitutional validity of prison regulations which prohibit the use of disrespectful language in a grievance. The district court found the regulations to be facially unconstitutional and the appeals court agreed. The appeals court held that prison officials may not punish a prisoner for using hostile, sexual, abusive or threatening language in a written grievance. The court noted that punishing a prisoner for the contents of a grievance burdens a prisoner's ability to file grievances and impacts his constitutionally protected rights under the Fourteenth and First Amendments. The court found that the line between an honest and unabashed airing of a grievance and the prohibited language was hazy and left a prisoner guessing as to whether he would be punished for his complaint. The inmate had filed a grievance against a correctional officer, alleging misconduct. The prisoner was found guilty of violating one of three prison disrespect regulations and was punished with a 14-day loss of privileges, which was suspended on the condition that the prisoner have 30 days of clear conduct. The district court found that it is well-established that an inmate cannot be punished for the act of filing a grievance. Although speech contained in an inmate grievance is not clearly protected under the First Amendment, the court suggested that neither has it been clearly held to be unprotected. The district court

ruled that prisoners should be allowed to file grievances within the prison system without fear of being sanctioned for their choice of words, and that inmates should be encouraged to use the prison grievance system rather than resort to the courts. The district court enjoined the prison from enforcing any disrespect rules against language within the inmate's grievance. (Oregon Department of Corrections)

U.S. District Court
GRIEVANCE
RETALIATION
LIBERTY INTEREST

Brown v. Carpenter, 889 F.Supp. 1028 (W.D.Tenn. 1995). A state inmate brought a § 1983 action against prison officials alleging that his due process rights were violated, that he was the victim of retaliation, and that he had a right to investigate the activities of prison staff. The district court dismissed the complaint, ruling that the inmate had no right protecting him from being charged with a disciplinary offense, and that some evidence supported the prison disciplinary board's decision that the inmate had committed the offense of disrespect. The prisoner had refused to abide by prison procedures and had announced his intention to abuse the prison grievance procedure by acting as a focal point for complaints about the administration. The court noted that the First Amendment right of access to courts does not guarantee any constitutional right to provide legal assistance to other inmates or to act in any representative capacity as an ombudsman, general advocate, or agitator. The court also held that reasonable limitations on the use of the prison grievance system and rules that require inmates to display respect for staff members in the use of that system are clearly related to the core function of maintaining security. (West Tennessee High Security Facility)

U.S. District Court
DUE PROCESS
CONDITIONS FOR
SEGREGATION

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
PRE-RELEASE

Clark v. Neal, 890 F.Supp. 345 (D.Del. 1995). A state prisoner filed a § 1983 action challenging his placement in prehearing detention and removal from a pre-release program without adequate notice and a hearing. The district court held the prisoner's eight-day pre-hearing detention as a security risk did not violate his due process rights, even though his security risk was not reviewed daily. The conditions of his confinement were not more severe than that of prisoners administratively segregated, he was removed from detention before the charges were dropped, and the detention did not affect the prisoner's sentence. The court found that the prisoner had no protected liberty interest in admission to a pre-release program so that denial of readmission based on charges against the prisoner would violate due process where admission was discretionary. (Multi-Purpose Criminal Justice Facility ("Gander Hill"), Pennsylvania)

U.S. District Court
HEARING IMPAIRED
ADA-AMERICANS WITH
DISABILITIES ACT

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 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 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 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. (New York Department of Correctional Services)

U.S. Appeals Court
PRETRIAL
DETAINEE
PUNISHMENT
VISITS

Collazo-Leon v. U.S. Bureau of Prisons, 51 F.3d 315 (1st Cir. 1995). A pretrial detainee subjected to disciplinary sanctions petitioned for a writ of habeas corpus. The U.S. District Court granted the writ and the government appealed. The appeals court, vacating and remanding, found that even if a restriction or condition of confinement may be viewed as having a punitive effect on a pretrial detainee, it is constitutional if it also furthers some legitimate governmental objective and is not excessive. The court found that 90-day disciplinary segregation and a six-month revocation of telephone and visitation privileges were reasonable sanctions for the pretrial detainee's attempted bribe and attempted escape. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. Appeals Court
RETALIATION

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
LENGTH OF
SEGREGATION

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
DUE PROCESS
EVIDENCE
WITNESS

Demaio v. Mann, 877 F.Supp. 89 (N.D.N.Y. 1995). An inmate brought a Section 1983 action against officials at a New York correctional facility. On cross-motions for summary judgment, the district court found that the inmate's right to procedural due process was not violated by a hearing officer's refusal to view a videotape of the incident of alleged misbehavior where there was no competent evidence that any tape of the incident ever existed. In addition, the inmate's right to procedural due process was not violated by a hearing officer's refusal to call a fellow inmate as a witness in the hearing on the misbehavior report where the hearing was not concluded due to the inmate's transfer to another institution, no finding was made on the charges in the report, and no sanction was imposed against the inmate. However, a genuine issue of material fact precluded summary judgment on the issue of correction officers' personal involvement in the alleged civil rights violations based on the inmate's ambiguous implication of one officer, evidence that other officers were involved in at least some of the events in question, and officers' failure to submit affidavits of anyone with personal knowledge of what actually took place during the time in question. (Shawangunk Correctional Facility, New York)

U.S. District Court
EQUAL PROTECTION
SEGREGATION
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. (MCI-Cedar Junction, Massachusetts)

U.S. District Court
LIBERTY INTEREST
PRISONER ON
PRISONER ASSAULT

Gangloff v. Poccia, 888 F.Supp. 1549 (M.D.Fla. 1995). After he was attacked by another prisoner, a prisoner filed a civil rights action against prison officials. The district court granted the defendants' motion to dismiss. The court found that a cursory statement by the prisoner that he had informed a prison guard of a security hazard posed by another prisoner did not show that prison officials had foreknowledge of the subsequent attack on the prisoner, despite his contentions that officials should have known at once that he was labelled as an informant and would be subject to attack from other prisoners. The court found that the prisoner's claim that he might be incarcerated at the same institution as the prisoner who attacked him did not establish the requisite causal connection to a violation of his constitutional rights. The court ruled that Florida state regulations on reporting prison disciplinary infractions did not create a protectible liberty interest for the prisoner in having a criminal action brought against another prisoner; the prisoner had claimed that the failure of officials to investigate or report the other prisoner's actions was the foreseeable cause of the subsequent attack on him. (Charlotte Correctional Institution, Florida)

U.S. District Court
DUE PROCESS
PROCEDURES

Geder v. Godinez, 875 F.Supp. 1334 (N.D. Ill. 1995). A prisoner brought a civil rights action against several prison officials alleging denial of due process during a disciplinary proceeding. On a motion of the defendants for summary judgment, the district court found that the prisoner was not denied due process in the disciplinary proceeding when officials denied his request to take a polygraph test, refused to watch the film from the camera which

allegedly recorded the events in question, misquoted the prisoner's statement on the adjustment committee report, and denied him an opportunity to attend a second hearing. The prisoner appeared at the first hearing and presented evidence. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
PROCEDURES
IMMUNITY

Green v. Bauvi, 46 F.3d 189 (2nd Cir. 1995). An inmate brought a Section 1983 action against prison officials alleging that a delay in a disciplinary hearing violated his due process rights. The U.S. District Court dismissed the complaint as to some defendants and subsequently granted summary judgment for the remaining defendants, and the inmate appealed. The appeals court, affirming the decision, found that although the allegations were sufficient to withstand a motion to dismiss for failure to state a claim, the lack of personal involvement of the prison officials in appointing the hearing officer justified summary judgment on the claim of undue delay in commencement of the hearing. The court found that it was objectively reasonable for the hearing officer to grant a one-day extension of the deadline for concluding the hearing to allow the inmate to obtain medical attention and to ensure that witnesses requested by the inmate could appear on his behalf, and therefore, the hearing officer was entitled to qualified immunity. It was also objectively reasonable for prison officials to believe that it was permissible for the inmate's hearing to commence within 14 days of his initial confinement and that a one-day delay in concluding the hearing would not violate due process. The officials were entitled to qualified immunity as a result. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
DISCRIMINATION
RETALIATION
EQUAL PROTECTION

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
RELIGION

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 COURTS
DUE PROCESS
NOTICE
RULES

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. District Court
EVIDENCE
GOOD-TIME

Hundley v. McBride, 908 F.Supp. 601 (N.D.Ind. 1995). An inmate filed a habeas corpus petition seeking restoration of good time credits alleging defects in the disciplinary proceedings that resulted in the loss of credits. The district court denied the petition, finding that due process did not require prison officials in a disciplinary case to conduct scientific testing to confirm a correctional officer's direct observation of sexual contact. The court found that evidence supported the disciplinary board's finding that the inmate had engaged in sexual acts with another inmate. (Westville Correctional Center, Indiana)

U.S. District Court
COUNSEL
DUE PROCESS
IMMUNITY
PROCEDURES

Jermosen v. Coughlin, 878 F.Supp. 444 (N.D.N.Y. 1995). An inmate brought a Section 1983 action against prison officials alleging a violation of his due process and free speech rights in connection with a disciplinary proceeding. The officials moved for dismissal or summary judgment and the inmate filed discovery motions and requested the appointment of counsel. The district court found that the inmate was not entitled to assignment of counsel as the inmate had amply demonstrated the ability to competently litigate his claims, and no exceptional circumstances existed. The court also found that the appellate hearing officer was not entitled to absolute immunity. In contrast to the absolute immunity enjoyed by members of the judiciary, prison officials who hear cases in which inmates are charged with rules infractions enjoy a lower degree of protection as those officials cannot be said to be completely independent from the institution. The district court would not dismiss the inmate's action against prison officials as a sanction for the inmate's use of foul and threatening language in submissions, but, rather, would place the inmate on notice that further use of such language would result in dismissal with prejudice. The inmate failed to establish a Section 1983 due process claim against prison officials based on alleged threats and harassment by officials, where mere verbal threats alone were insufficient to support a claim under Section 1983, and there was no showing of uninvited physical contact. The court found that reversal of the inmate's "keeplock" sentence did not preclude the due process claims, notwithstanding the contention that the reversal cured any procedural deficiencies. The reversal occurred after the inmate served a portion of his keeplock sentence. In addition, genuine issues of material fact regarding whether the inmate was denied due process at the prison disciplinary hearing and whether his posthearing confinement was punitive precluded summary judgment. However, the inmate failed to establish that his First Amendment rights were violated at the prison disciplinary hearing where prison officials asserted legitimate penological objectives; threatening and abusive language find little protection under the First Amendment, and threats of violence are unprotected. (New York)

U.S. District Court
CRIMINAL CHARGES
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
ASSISTANCE
IMPARTIALITY
SEGREGATION
DUE PROCESS

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
GOOD TIME

Leonard v. Nix, 55 F.3d 370 (8th Cir. 1995). A prison inmate who lost good time credits and had other disciplinary sanctions imposed brought a habeas corpus petition alleging violation of his First Amendment rights. The district court denied habeas corpus relief and the appeals court affirmed. The appeals court held that the sanctions against the inmate were necessary to preserve the prison's penological interest in order and did not violate the inmate's First Amendment rights. The inmate was disciplined for writing scurrilous comments about the prison warden in his "jail house lawyer" communications directed to a former inmate outside the prison. The court found that the inmate's letters were not genuine, personal outgoing mail, but rather were diatribes directed at and toward the warden and prison staff; the inmate knew that his letters would be read by staff. (Iowa State Penitentiary)

U.S. District Court
DUE PROCESS
RETALIATION

Maclean v. Secor, 876 F.Supp. 695 (E.D. Pa. 1995). An inmate brought an action against prison officials alleging his rights were violated when he was threatened and placed in administrative detention. On the officials' motion for summary judgment, the district court found that the prison officials did not violate the Eighth Amendment's ban on cruel and unusual punishment or substantive due process under the Fifth Amendment by verbally threatening the inmate, even if the threats were based on the inmate's status as a known sex offender. In addition, the inmate's allegation that charges against him were fabricated did not state a due process claim against prison officials, absent an allegation that the charges were filed in retaliation for his exercise of a constitutional right or that his initial hearing before the disciplinary committee failed to comport with the requirements of due process. (Federal Correctional Institution, Schuylkill, Pennsylvania)

U.S. District Court
APPEAL
DUE PROCESS
LIABILITY

Malerba v. Selsky, 872 F.Supp. 1136 (N.D.N.Y. 1995). A civil rights action was brought against prison officials. The district court found that the person with the responsibility for hearing appeals of inmate disciplinary proceedings was not entitled to absolute quasi-judicial immunity in view of the large number of hearings which he must review and the fact that he was a designee of a state officer, that his decisions were unreviewed by that state officer so that they could be inconsistent, that there was no true adversarial process in the appeals, and that there was little opportunity to obtain a cure for any due process violations that might occur. (New York Prison)

U.S. District Court
PUNISHMENT
EXERCISE

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 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 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
DRUG TESTING
WITNESS
DOUBLE JEOPARDY
VISITS

McDiffett v. Stotts, 902 F.Supp. 1419 (D.Kan. 1995). A prison inmate filed a § 1983 action against prison authorities and the district court granted summary judgment for the defendants. The court held that the inmate's allegations with regard to urinalysis testing did not state a cognizable claim under § 1983. The testing was not conducted only to harass him, and although the testing was not random it did not violate the Fourth Amendment because one test was ordered because the inmate was suspected of smoking marijuana in his cell, and the other was ordered based on suspicion that the inmate possessed marijuana. The court noted that the Kansas regulation that allowed targeting of certain prison inmates for drug screening is reasonably related to the legitimate penological interest of keeping drugs out of a prison. The court also held that the Kansas statute that allows drivers tested for being under the influence of drugs or alcohol to have a second test by a physician of their choice has no bearing on drug screening of prison inmates. The court held that being placed in administrative segregation did not violate the inmate's due process rights where officials provided a pre-segregation 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. (El Dorado Correctional Facility, Kansas)

U.S. District Court
DUE PROCESS
SEGREGATION

McGuinness v. Dubois, 891 F.Supp. 25 (D.Mass. 1995). An inmate filed a § 1983 action against corrections officials challenging his confinement in a disciplinary unit. The district court granted summary judgment for the defendants in part, and denied it in part. The court found that a regulation authorizing placement in the Departmental Disciplinary Unit (DDU) for up to ten years did not violate a statute limiting confinement in the isolation unit to 15 days. The court found that denial of the inmate's request for a prison officer to testify in his disciplinary hearing violated his right to procedural due process; however, corrections officials were entitled to qualified immunity for failure to train and supervise because mere negligence is insufficient to impose § 1983 liability on supervisors. The court also ruled that the inmate was denied a state created liberty interest in educational programs without due process because his rights were violated in the disciplinary hearing that resulted in his placement in DDU, where inmates in DDU were prohibited from participating in any educational programs or activities. (Massachusetts Correctional Institution-Cedar Junction)

U.S. District Court
ASSISTANCE
EVIDENCE

McKinney v. Hanks, 911 F.Supp. 359 (N.D.Ind. 1995). Two prisoners who had been disciplined by prison misconduct adjustment boards brought habeas corpus petitions. The district court held that one inmate did not receive ineffective assistance from a lay advocate and had not been unlawfully induced to enter a guilty plea. The court also found that evidence supported the adjustment board's findings that the inmates had violated prison disciplinary rules. One inmate had damaged State property and was ordered by the board to pay restitution and to serve eight days in disciplinary segregation. The other inmate had threatened a prison employee. (Indiana State Prison)

U.S. Appeals Court
WITNESS
RECORDS

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 held that the jail's de facto policy of not allowing inmates to call witnesses in their defense at disciplinary hearings denied inmates due process, noting that a decision to preclude calling of witnesses must be made on a case by case analysis of potential hazards and that a

blanket proscription against calling certain types of witnesses was an overreaction which violates minimum due process. 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
DRUG TESTING
IMPARTIALITY

Moore v. Selsky, 900 F.Supp. 670 (S.D.N.Y. 1995). An inmate filed a civil rights action against a prison hearing officer and others alleging constitutional violations that resulted from disciplinary proceedings in which he was found guilty of violating a rule prohibiting drug use by inmates. The district court granted summary judgment for the defendants, finding that evidence did not support the inmate's contention that the hearing officer had impermissibly prejudged his case. The court noted that the special characteristics of the prison environment make it permissible for the impartiality of some officials to be encumbered by various conflicts of interest that in another context might be adjudged as violations of due process. The court also found that the hearing officer's reliance on a letter from the manufacturer of a drug test that unequivocally asserted the infallibility of the test did not violate the inmate's rights. The court held that it was reasonable for the hearing officer to believe that it would serve no purpose to review the inmate's records as required by a corrections policy. (Ogdensburg Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS

Morissette v. Peters, 45 F.3d 1119 (7th Cir. 1995). An inmate sued a prison and prison officials for violations of Section 1983 based on disciplinary charges and confinement stemming from alleged drug possession in prison. The U.S. District Court granted summary judgment for the inmate on the due process claim and awarded nominal damages, and appeal was taken. The appeals court found that there was no due process violation in improperly regarding the inmate's possession of marijuana as dangerous contraband. The error was reversed by the Administrative Review Board and any extra days served by the inmate as a result of discipline were credited to a subsequent sentence so that he served no additional time in segregation due to the improper portion of the disciplinary action. (Pontiac Correctional Facility, Illinois)

U.S. Appeals Court
SEGREGATION
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. Appeals Court
PUNISHMENT
RESTRAINTS
RETALIATION

Murphy v. Walker, 51 F.3d 714 (7th Cir. 1995). A pretrial detainee brought a civil rights action against jail officials alleging retaliation. The U.S. District Court dismissed the complaint for failure to state a claim and the detainee appealed. The appeals court found that allegations of retaliation were sufficient to state claims for violation of the detainee's due process rights. A claim that the pretrial detainee was shackled to the floor of his cell and an allegation that the pretrial detainee's telephone privileges were improperly revoked, thereby impeding his access to an attorney, both in retaliation for the detainee's blaming of a guard for an injury, were sufficient to state a claim for violation of due process rights. (Mason County Jail and Tazwell County Jail, Illinois)

U.S. District Court
DISCIPLINARY
PROCEDURES
IMMUNITY

Payne v. Axelrod, 871 F.Supp. 1551 (N.D.N.Y. 1995). A prisoner brought a civil rights action against the Department of Correctional Services (DOCS) commissioner, a prison superintendent, a hearing officer, and corrections officers. The district court found that exclusion of the prisoner from his own disciplinary hearing was justified by the prisoner's threats of violence at the hearing. The court also found that, normally, prison officials serving as hearing officers are not absolutely immune but are protected by qualified immunity only. The fact that the hearing officer was not an employee of the prison at which the hearing took place but was employed by the DOCS central office did not mean that he was sufficiently independent of prison authorities to merit absolute immunity. An allegation that a corrections officer falsely accused the prisoner of weapons possession in retaliation for reporting another officer's alleged involvement in arson stated a claim under the civil rights statute, which was not subject to dismissal on the grounds of qualified immunity. (Great Meadow Correctional Facility, New York)

U.S. District Court
INFORMANT

Ping v. McBride, 888 F.Supp. 917 (N.D.Ind. 1995) Two state prisoners sought a writ of habeas corpus challenging disciplinary actions taken against them. The district court dismissed the petitions with prejudice finding that the use of confidential informant testimony did not violate the inmates' rights. Noting the "lawyerlike" quality of the petitions, the court "compliments these two pro se petitioners on the legal quality of their presentation." Branchville Training Center, Indiana)

- U.S. District Court
RETALIATION
- 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. (Gus Harrison Correctional Facility, Michigan)
- U.S. District Court
WITNESS
- Samuels v. LeFevre, 885 F.Supp. 32 (N.D.N.Y. 1995). A former state prisoner filed a § 1983 action against corrections officials alleging violation of his Fourteenth Amendment due process rights to call a witness at a disciplinary hearing. The district court found that an inmate facing a disciplinary proceeding should be allowed to call witnesses in his defense when doing so will not be unduly hazardous to institutional safety, but that the defendants were not liable under the doctrine of qualified immunity. (Clinton Correctional Facility, New York)
- U.S. District Court
WITNESS
EVIDENCE
- Sanchez v. Roth, 891 F.Supp. 452 (N.D.Ill. 1995). An inmate filed a § 1983 action against prison officials alleging due process violations in connection with his disciplinary proceeding. The district court granted summary judgment for the defendants, ruling that the exclusion of the inmate's witnesses from a hearing did not violate due process because the inmate did not comply with notice requirements. Although the inmate submitted a witness list the day before his hearing, he did not indicate what their proposed testimony would be or ask that they be interviewed prior to the hearing to determine if their testimony would be necessary. The court also held that evidence that the inmate had been misidentified in a prior unrelated disciplinary proceeding was irrelevant to the present proceeding and the exclusion of this evidence did not deprive the inmate of due process. (Stateville Correctional Center, Illinois)
- U.S. Supreme Court
DUE PROCESS
LIBERTY INTEREST
WITNESS
- 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 judgment 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 impermissibly 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
SEGREGATION
- 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. District Court
DRUG TEST
DUE PROCESS
EQUAL PROTECTION
VISITS
- Sorenson v. Murphy, 874 F.Supp. 461 (D. Mass. 1995). An inmate sued a superintendent and a deputy superintendent of a correctional facility, alleging violations of his due process and equal protection rights. On the defendants' motion to dismiss or for summary judgment, the district court found that the prisoner failed to set forth the necessary elements of an equal protection claim. He received a disciplinary report, was transferred to a different section of the correctional facility, and lost his visiting privileges based upon a

urine sample which was found to contain traces of barbiturates. However, after the results of an outside laboratory test revealed that the urine sample contained no barbiturates, the disciplinary report was dismissed, the visiting privileges were restored, and the prisoner was returned to his previous section. (Old Colony Correctional Center, Massachusetts)

U.S. District Court
PROCEDURES
WITNESS
EVIDENCE
LIBERTY INTEREST

Stone-Bey v. Swihart, 898 F.Supp. 1287 (N.D.Ind. 1995). A prison inmate who had been placed in segregation for violating prison rules by allegedly threatening fellow inmates brought a § 1983 action against prison officials alleging violation of his due process rights. The district court held that the failure on the part of a prison official who was investigating disciplinary charges against the inmate to sign his reports or properly document witness statements did not violate the inmate's due process rights. The court also held that failure to provide the inmate with a written copy of witness statements against him did not rise to the level of a due process violation. The court found that a fellow inmate's recanted statement was not a constitutionally insufficient basis for the disciplinary board's finding, absent some corroboration; however, a material question of fact as to whether such corroboration existed precluded summary judgment on the inmate's federal due process claim. (Indiana State Prison)

U.S. District Court
WITNESS
EVIDENCE
SEGREGATION

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. However, 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. Appeals Court
DISCIPLINARY
PROCEDURES
IMMUNITY

Tulloch v. Coughlin, 50 F.3d 114 (2nd Cir. 1995). An inmate brought a civil rights action against a prison disciplinary officer. The U.S. District Court dismissed the claims and the inmate appealed. The appeals court, reversing the decision, found that although absolute immunity is appropriate for judges in the exercise of their judicial function, the prison disciplinary officer serving pursuant to New York's inmate hearing officer program was entitled to qualified, not absolute, immunity in the civil rights action brought by the inmate. (Attica Correctional Facility, New York)

U.S. District Court
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
PUNISHMENT

Williams v. Coughlin, 875 F.Supp. 1004 (W.D.N.Y. 1995). A prison inmate sued a prison and officials under Section 1983 for a violation of the Eighth Amendment as a result of deprivation of food as punishment for a disciplinary infraction (refusal to return food trays). The district court found that there were genuine issues of material fact, precluding summary judgment for either the prisoner or the prison officials, as to whether deprivation of five consecutive meals over a period of two days was sufficiently serious to support a claim of Eighth Amendment violation. (Southport Correctional Facility, New York)

U.S. District Court
DUE PROCESS
GOOD TIME
WITNESS

Zamakshari v. Dvoskin, 899 F.Supp. 1097 (S.D.N.Y. 1995). An inmate filed a § 1983 suit against state prison officials seeking damages for alleged due process violations which occurred during two disciplinary proceedings. The district court granted summary judgment for the defendants, finding that although procedural due process protections applied to a hearing that resulted in a two-year confinement to a special housing unit and loss of good-time, the inmate's due process rights were not violated. The court noted that due process protections may not have applied in a second disciplinary proceeding which resulted in a 60-day sentence to a special housing unit but not to the loss of good-time. The court held that refusing to consider the inmate's mental condition and denying his request for a gallery listing to identify potential witnesses did not violate due process. (Sing Sing Correctional Facility and Greenhaven Correctional Facility, New York)

1996

U.S. District Court
WITNESS
INFORMANT

Abrazinski v. DuBois, 940 F.Supp. 361 (D.Mass. 1996). An inmate brought a § 1983 action against prison officials alleging violation of his due process rights as the result of disciplinary proceedings. The district court found that the fact that the inmate was not allowed to call witnesses who were incarcerated at other correctional facilities did not violate his due process rights. The court also found that the hearing officer had properly indicated the basis on which he had relied on an unidentified informant's information; the officer had stated

that the informant had been reliable in the past. (Massachusetts Correctional Institution at Norfolk)

U.S. Appeals Court
FINE
EQUAL PROTECTION

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. (Green Haven Correctional Facility, New York)

U.S. District Court
ASSISTANCE
RETALIATION

Alnutt v. Cleary, 913 F.Supp. 160 (W.D.N.Y. 1996). An inmate filed a civil rights action alleging his constitutional rights were violated by corrections officials while he was serving as an inmate representative on a grievance committee. The defendants moved to dismiss the case and the district court denied the motion in part, finding that summary judgment for the defendants was precluded on one claim. The inmate alleged that state corrections officials verbally harassed him, made direct threats, and prepared a false misbehavior report charging him with marijuana use following his election as a representative on an inmate grievance resolution committee. While the court ruled that these allegations did not give rise to a civil rights cause of action, the allegations suggested a correlation between adverse actions against the inmate and his activities as an inmate representative--precluding summary judgment on the inmate's retaliation claim. The court also found that the transfer of the inmate to another state correctional facility, without a hearing, violated a state regulation and did not meet the emergency exception to the hearing requirement. (Wende Correctional Facility, New York)

U.S. District Court
SEGREGATION
DUE PROCESS
LENGTH OF
SEGREGATION

Bonner v. Parke, 918 F.Supp. 1264 (N.D.Ind. 1996). A prison inmate who had been disciplined, following a hearing, with a sanction of placement into disciplinary segregation for three years brought a habeas corpus petition. The district court denied the petition, finding that a three year term of segregation did not impose an atypical and significant hardship on the inmate that would create a liberty interest protected by the due process clause. The court also found that the inmate had received any process he was due prior to the hearing, and that the finding of misconduct was supported by evidence. (Indiana State Prison)

U.S. District Court
INFORMANT
EVIDENCE
GOOD-TIME

Broussard v. Johnson, 918 F.Supp. 1040 (E.D.Tex. 1996). Prisoners filed a § 1983 action alleging that a disciplinary hearing violated their civil rights. The district court held that the action which challenged the fact and duration of confinement would be treated as a habeas corpus action. The court found that the prisoner's rights to procedural due process were violated by reliance on the credibility of a confidential informant without independent evaluation, and that competent evidence did not support a finding of guilt. The court noted that the prisoners were singled out from three shifts of 100 workers in an area in which bolt cutters were found, and that evidence did not support the finding that the prisoners were the persons responsible for hiding the bolt cutters. (Eastham Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
WITNESS
EVIDENCE
GOOD-TIME

Brown v. Angelone, 938 F.Supp. 340 (W.D.Va. 1996). An inmate brought a § 1983 action against prison officials, alleging violation of his constitutional rights as the result of disciplinary actions. The district court dismissed the case, finding that a hearing officer was not required to aid the inmate in procuring witnesses or evidence for his disciplinary hearing. The court also found that the inmate's claim for restoration of his earned good conduct time was more appropriately filed as a petition for a writ of habeas corpus. (Augusta Correctional Center, Virginia)

U.S. District Court
SEGREGATION
LIBERTY INTEREST
WITNESS

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
WITNESS
DUE PROCESS
INFORMANTS

Campo v. Keane, 913 F.Supp. 814 (S.D.N.Y. 1996). A prisoner brought a § 1983 civil rights action against correctional facility staff alleging violation of his due process rights during a disciplinary hearing. The district court granted the defendants' motion for summary judgment, finding that the prisoner failed to create a genuine issue of material fact regarding the alleged bias of the hearing officer. The court found that it was reasonable for the hearing officer to have questioned two correctional officers about the credibility of confidential informants, rather

than questioning the informants directly. The court ruled that it was not necessary for a prison official to explain in writing the reasons for refusing to allow the prisoner to call a witness at a disciplinary hearing, but that at some point the reasons must be explained. (Sing Sing Correctional Facility, New York)

U.S. District Court
EVIDENCE
DUE PROCESS
TRANSFER

Cardenas v. Wigen, 921 F.Supp. 286 (E.D.Pa. 1996). Three prison inmates who were disciplined and transferred to different facilities when they were found to have violated prison regulations petitioned for writs of habeas corpus. The prisoners had been found responsible for contraband that was discovered in a common area they shared with nine other inmates. The district court found that prison officials violated the inmates' due process rights by finding that there was a one in 12 chance that the inmates had been responsible for the contraband, because this did not constitute "some evidence" of their guilt and the constructive possession doctrine could not be stretched to such lengths. But the district court denied the inmates' petitions ruling that they could not seek restoration of their prior custodial status or reassignment to the facility at which they had originally been held, noting that the discipline had not negatively impacted on their good time credits. (Federal Correctional Institute, Fort Dix, Pennsylvania)

U.S. District Court
IMPARTIALITY
PUNISHMENT
DUE PROCESS

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

U.S. District Court
PRETRIAL DETAINEES
SEGREGATION

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. (Sussex Correctional Institution, Delaware)

U.S. District Court
DUE PROCESS

Cockrell-El v. District of Columbia, 937 F.Supp. 18 (D.D.C. 1996). An inmate brought an action against corrections officials alleging violation of his constitutional rights in connection with an alleged assault by a guard when the inmate was returning from a religious service, and from a disciplinary proceeding arising from the assault. The court found that the inmate failed to establish a denial of due process violation during a disciplinary proceeding because the inmate did not have a protected liberty interest in remaining free from administrative segregation, and was informed of the charges against him and notified of his hearings. The court found that a prison guard did not violate the inmate's Eighth Amendment rights because the guard had asserted that his blow to the inmate's face was necessary for both self-protection and to maintain internal safety in a cell block. The court found the inmate's contention that his hands were in handcuffs to be incredible given the guard's injuries--a cut lower lip and injuries to his wrist and arm. (Maximum Security Facility, District of Columbia)

U.S. District Court
DUE PROCESS
SEGREGATION
PRETRIAL DETAINEES

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. Appeals Court
HEARING IMPAIRED
INTERPRETER
ADA-AMERICANS WITH
DISABILITIES ACT

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
HEARING IMPAIRED

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
WITNESS
INTERPRETER
GOOD TIME

Ferreira v. Dubois, 963 F.Supp. 1244 (D.Mass. 1996). An inmate filed a civil rights action against prison officials challenging a prison disciplinary proceeding that resulted in the loss of good time credits. The district court denied summary judgment for the officials, finding that a genuine issue of fact existed on whether the inmate asked a hearing officer to have a witness testify in person at a hearing and whether another witness sufficiently understood the English language to communicate his version of events without an interpreter. The court found that a state regulation governing assistance for inmates at disciplinary hearings did not mandate the use of an interpreter to assist witnesses. (Old Colony Correctional Center, Massachusetts)

U.S. Appeals Court
CONDITIONS OF
SEGREGATION
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 indeterminate 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. Appeals Court
INFORMANTS

Giakoumelos v. Coughlin, 88 F.3d 56 (2nd Cir. 1996). After failing in his state court challenges to a disciplinary proceeding, an inmate filed a federal civil rights action against state prison officials. The district court granted summary judgment for the defendants and the appeals court affirmed, finding that the officials' failure to disclose an informant's identity to the inmate did not deny the inmate due process because the officials had a substantial security interest in failing to disclose the identity. (Green Meadow Correctional Facility, New York)

U.S. Appeals Court
RETALIATION
TRANSFER

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

U.S. Appeals Court
RETALIATION
GRIEVANCE
DISCRIMINATION

Graham v. Henderson, 89 F.3d 75 (2nd Cir. 1996). An inmate filed a pro se action claiming racial discrimination and alleging that prison officials unconstitutionally retaliated against him for protesting the proposed loss of showers in a prison workshop. The district court granted summary judgment for the defendants and the appeals court vacated in part and affirmed in part. The appeals court held that fact issues precluded summary judgment for the officials. The officials claimed that the inmate was circulating a petition urging a work slowdown in violation of prison rules, but the inmate and other prisoners claimed he was merely collecting names of prisoners as part of a grievance process and that there was no work to be done on the day the inmate was accused of organizing a slowdown. (Auburn Correctional Facility, New York)

U.S. Appeals Court
GOOD-TIME
LIBERTY INTEREST

Hamlin v. Vaudenberg, 95 F.3d 580 (7th Cir. 1996). A prisoner filed a § 1983 suit alleging that a disciplinary proceeding deprived him of due process. The district court dismissed the complaint and the appeals court affirmed. The appeals court found that the loss of good-time credits was sufficient to allege a protectible liberty interest but that state postdeprivation remedies were adequate. (Green Bay Correctional Institute, Wisconsin)

U.S. District Court
RETALIATION
SEGREGATION

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

U.S. District Court
COUNSEL

Horne v. Coughlin, 949 F. Supp. 112 (N.D.N.Y. 1996). An inmate brought a § 1983 action against corrections officials alleging that their failure to provide him with substitute counsel at a disciplinary hearing violated his due process rights. The district court entered judgment for the defendants, finding that the inmate's confinement in a special housing unit for six months was not an atypical and significant hardship and thus the disciplinary hearings were not subject to the requirements of the due process clause. (Eastern Correctional Facility, New York)

U.S. Appeals Court
INFORMANTS
ASSISTANCE
COUNSEL

Hudson v. Hedgepeth, 92 F.3d 748 (8th Cir. 1996). After exhausting his state postconviction relief remedies an inmate filed a federal habeas corpus action challenging prison disciplinary charges against him. The district court denied the petition and the appeals court affirmed. The appeals court held that due process did not entitle the inmate to counsel substitute to assist in his defense of prison disciplinary charges, even though the disciplinary committee withheld the names of confidential informants and the specific dates of the alleged events. The court also held that the disciplinary committee's refusal to obtain statements from alibi witnesses did not violate the inmate's due process rights. (Iowa Men's Reformatory)

U.S. District Court
SEGREGATION
GOOD TIME
DUE PROCESS

Justice v. Coughlin, 941 F.Supp. 1312 (N.D.N.Y. 1996). A former inmate filed a § 1983 action alleging denial of procedural due process in the conduct of a disciplinary hearing. The district court held that the prisoner had a protected liberty interest in the disciplinary hearing, implicating procedural due process, because he faced both unlimited time in a special housing unit and unlimited loss of good time; this interest was not invalidated retroactively when his disciplinary convictions were reversed because he had already served a substantial portion of his special housing unit sentence. The court found that whether the disciplinary proceeding violated procedural due process could not be decided on summary judgment. (Department of Correctional Services, New York)

U.S. District Court
RELIGION

Karolis v. New Jersey Dept. of Corrections, 935 F.Supp. 523 (D.N.J. 1996). An inmate who was a Christian Scientist sued corrections officials alleging violation of his rights under the First Amendment and the Religious Freedom Restoration Act (RFRA). The prisoner had refused to take a tuberculosis screening test and was punished for his refusal. The court held that the test substantially burdened the inmate's right to free exercise of religion under RFRA, where the tenets of Christian Science prohibit intrusive medical procedures. But the court upheld the state's involuntary administration of the test, finding it was justified under RFRA since it was the least restrictive means to further the state's compelling interest in preventing the spread of tuberculosis. (North State Prison, New Jersey)

U.S. Appeals Court
FINE

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The inmate's fine of \$325, of which \$25 was imposed for possession of an explosive device and \$300 was imposed for possession of a dangerous weapon was proper even though the \$300 fine was a 50% upward deviation from sanction guidelines, because state law gave prison officials the discretion to deviate upwards if supported by findings of fact. In this case the record showed that the inmate possessed two knives, that it was the third time he had been caught in possession of homemade knives, and that the knives were especially dangerous because other inmates knew he had them. (Oregon State Prison)

U.S. District Court
CRIMINAL CHARGES

Lacy v. Berge, 921 F.Supp. 600 (E.D.Wis. 1996). An inmate filed a suit seeking injunctive relief and monetary damages for alleged violation of his civil rights. The district court held that a prison guard did not act with deliberate indifference toward a serious risk of harm faced by the inmate, even assuming that the guard watched a fight briefly and did not intervene. The

inmate claimed his attacker was armed with a shampoo brush with which he was beating him unconscious, the inmate did not establish that the fight was readily preventable or that it would have been reasonable for the guard to have tried to stop the fight, or that the guard acting alone could have ended the fight any sooner. The court also held that the alleged failure of prison officials to investigate the fight thoroughly and to refer the attacking inmate to the district attorney for criminal prosecution did not violate the inmate's constitutional rights, as the inmate suffered no harm from the nonprosecution of his attacker. The court found that the attacking inmate was not subject to suit under § 1983. (Fox Lake Correctional Institution, Wisconsin)

U.S. District Court
SEGREGATION
DUE PROCESS
GOOD TIME

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. Appeals Court
WITNESS

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. District Court
EVIDENCE
DUE PROCESS

McPherson v. McBride, 943 F.Supp. 971 (N.D.Ind. 1996). An inmate who had been disciplined for allegedly engaging in sexual acts with another prisoner petitioned for habeas corpus relief. The district court conditionally granted the petition, finding that the inmate's due process rights were denied in a disciplinary hearing because the disciplinary board did not have before it the testimony of an officer which would have directly undercut evidence relied on by the board. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
GOOD TIME
DRUG TESTING
EVIDENCE

Meeks V. McBride, 81 F.3d 717 (7th Cir. 1996). An inmate filed a habeas corpus petition following a prison disciplinary board's decision to deprive him of good-time credits and to lower the rate at which he would earn good time in the future. The district court denied the petition and the inmate appealed. The appeals court reversed the lower court decision, finding that a challenged toxicology report was insufficient to support a finding that the inmate had smoked marijuana. The inmate produced exculpatory evidence that negated the reliability of the evidence the disciplinary board used to reach its decision--the toxicology report bore the inmate's name but listed an incorrect prisoner number. There was another inmate in the prison with the same name at the time the urine sample was taken and the two inmates had been confused on one previous occasion. However, the court found that a second disciplinary proceeding following acquittal on the first proceeding did not violate the double jeopardy clause. (Westville Correctional Center, Indiana)

U.S. Appeals Court
RULES
GOOD TIME
TRANSFER

Moorman v. Thalacker, 83 F.3d 970 (8th Cir. 1996). A prisoner filed a § 1983 action against prison officials, alleging a due process violation arising from discipline imposed for violation of prison regulations. The district court denied the defendants' request for qualified immunity and ruled in favor of the prisoner. The defendants appealed. The appeals court reversed the lower court decision, ruling that the discretionary transfer of the prisoner to a medium security prison was not a disruption exceeding the ordinary incidents of prison life and therefore did not implicate a due process liberty interest. The court also ruled that the prison officials were entitled to qualified immunity. The officials had found that the prisoner violated prison regulations when he had a conversation with a fellow prisoner about obtaining a handgun immediately upon the prisoner's imminent release; the prisoner's discipline included the loss of sixteen days of good time. (Iowa State Men's Reformatory)

U.S. Appeals Court
CONDITIONS OF
SEGREGATION
EXERCISE
CLOTHING
PUNISHMENT

O'Leary v. Iowa State Men's Reformatory, 79 F.3d 82 (8th Cir. 1996). Iowa inmates who were placed in a progressive four-day behavior management program filed suit under § 1983 alleging cruel and unusual punishment. The district court entered judgment for the defendants and the inmates appealed. The appeals court affirmed the lower court decision, finding that the inmates were not denied the minimal civilized measures of life's necessities. The court also found that there was no showing that prison officials were deliberately indifferent to an excessive risk to inmate health or safety. The inmates had received disciplinary reports and were placed in the behavior management program. On the first day of the program prisoners are deprived of underwear, blankets, mattresses, exercise and visits; prisoners are provided with normal diets, sanitation and hygiene supplies, and they may read their mail but they may not retain it. On the second and following days prisoners gradually regain the deprived items--as long as they demonstrate satisfactory behavior. (Iowa State Men's Reformatory)

- U.S. District Court
SEGREGATION
PUNISHMENT
- Scott v. Coughlin, 944 F.Supp. 266 (S.D.N.Y. 1996). A prisoner brought a federal action against prison officials, challenging a disciplinary proceeding that resulted in his placement in a special housing unit for 60 days as punishment for failure to obey an order. The district court found that the 60-day detention of the inmate did not create an atypical or significant hardship sufficient to implicate a protected liberty interest. Disciplinary segregation did not adversely affect the duration of the inmate's sentence and did not differ materially from the treatment of inmates assigned to the unit for nondisciplinary reasons. (Green Haven Correctional Facility, New York)
- U.S. District Court
NOTICE
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
FOOD
- 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 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
SEGREGATION
REVIEW OF
SEGREGATION
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. Appeals Court
INFORMANTS
EVIDENCE
- Williams v. Fountain, 77 F.3d 372 (11th Cir. 1996). A prisoner who was found guilty of fighting with another inmate in prison disciplinary proceedings brought a § 1983 action against prison officials alleging violation of his due process rights. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court found that officials relied upon the prisoner's own statement that he was involved with a fight, as well as information provided by confidential informants whose credibility was not evaluated by the officials. Although due process requires that a record of disciplinary proceedings document some good faith investigation and findings as to the credibility of confidential informants and the reliability of information provided by them, the court found the relevant question to be whether there is any evidence in the record that would support the conclusion reached by the disciplinary board. (Georgia State Prison, Reidsville)
- U.S. District Court
EXERCISE
- Williams v. Greifinger, 918 F.Supp. 91 (S.D.N.Y. 1996) reversed 97 F.3d 699. An inmate who refused to submit to a tuberculosis (TB) test was segregated pursuant to a corrections policy. While segregated the inmate was denied opportunities to participate in any exercise activities outside of his cell. The inmate sued corrections officials, alleging that the policy was unconstitutional. The court held that the ability of the inmate to end his segregation by submitting to the TB test did not cure the Eighth Amendment violation inherent in his disciplinary confinement. On appeal, the court reversed with regard to qualified immunity, denying immunity to the official. (Ossining Correctional Facility, New York)
- U.S. District Court
EVIDENCE
LIBERTY INTEREST
- Wilson v. Harper, 949 F. Supp. 714 (S.D.Iowa 1996). An inmate brought a § 1983 action against prison officials alleging violation of his due process rights in connection with a disciplinary hearing. The district court entered judgment for the officials, finding that the inmate's displacement from his status as an honor lifer to stricter conditions of disciplinary detention and cell restriction, as the result of a disciplinary decision that was supported by no evidence, did not impose an atypical and significant hardship on him so as to deprive him of a liberty interest. The court also found that the officials would not have been immune from action if the inmate had established such a liberty interest. (Iowa State Penitentiary)
- U.S. Appeals Court
APPEAL
SEGREGATION
- 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. (Iowa State Penitentiary)

U.S. District Court
DUE PROCESS
EVIDENCE
RECORDS

Barone v. Hatcher, 984 F.Supp. 1304 (D.Nev. 1997). An inmate alleged violation of his constitutional rights in connection with a prison disciplinary hearing. The district court held that the carelessness of officials with respect to safeguarding evidence and keeping records was insufficient to demonstrate a conspiracy. The court also found that the inmate's 365-day transfer to disciplinary segregation did not implicate a constitutionally protected liberty interest. (Southern Desert Correctional Center, Nevada)

U.S. Appeals Court
RETALIATION

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. Appeals Court
WITNESS
EVIDENCE
DUE PROCESS

Brooks v. Difasi, 112 F.3d 46 (2nd Cir. 1997). An inmate brought a pro se action against corrections officials alleging violation of his rights as the result of their refusal to allow him to call witnesses at a disciplinary hearing. The district court dismissed the case and the inmate appealed. The appeals court vacated and remanded, finding that the district court should have determined the factual issues necessary for an assessment of whether the resulting disciplinary confinement constituted an atypical and significant hardship on the inmate. The district court failed to consider the length of confinement or to make any findings about the restrictiveness of confinement or prevailing conditions. (Elmira Correctional Facility, New York)

U.S. District Court
GOOD TIME
PUNISHMENT
EXPUNGEMENT

Burnell v. Coughlin, 975 F.Supp. 473 (W.D.N.Y. 1997). A state inmate filed a pro se § 1983 action seeking money damages for alleged due process violations relating to a prison disciplinary action. The district court granted summary judgment for the defendants, finding that the loss of one year's good time credits implicated a constitutionally protected liberty interest of real substance, but that the inmate could not pursue money damages under § 1983 without showing that the disciplinary decision had already been invalidated. The court noted that the proper procedure would be to attack the results of the disciplinary hearing directly by appeal, habeas corpus petition, or another collateral attack. The court also found that the inmate's request that the misbehavior report be expunged from his prison record was a form of relief only available by a habeas corpus petition, not under § 1983. (Attica Correctional Facility, New York)

U.S. District Court
DUE PROCESS
EVIDENCE
WITNESS
TRANSFER

Charles v. Coughlin, 985 F.Supp. 88 (E.D.N.Y. 1997). An inmate who had been sentenced to 600 days imprisonment in a special housing unit following a disciplinary hearing filed a § 1983 action against prison officials. The district court granted summary judgment for the officials, finding that the temporary disappearance of a tape containing a stabbing victim's testimony did not deprive the inmate of due process. The court found that the hearing officer's refusal to allow the inmate to call an additional witness after a deposition was read into the record did not deprive the inmate of due process. The court also found that the transfer of the inmate to another correctional facility during the pendency of the disciplinary proceeding did not deprive the inmate of due process. The court noted that the inmate had called each listed witness prior to transfer and he did not ask to call any additional witnesses until after he was transferred. (Arthur Kill Correctional Facility, New York)

U.S. District Court
INTERPRETER

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
INFORMANT

Gomez v. Kaplan, 964 F.Supp. 830 (S.D.N.Y. 1997). An inmate who was found guilty of stabbing another inmate brought a § 1983 action alleging violations of his constitutional rights in connection with a prison disciplinary hearing. The district court granted summary judgment in favor of the inmate, finding that the inmate's right to due process was violated by the failure of the hearing officer who presided over the disciplinary hearing to make an independent assessment of the reliability of a confidential informant. The court held that neither the hearing officer nor the reviewing officer could invoke the protection of qualified immunity. (Green Haven Correctional Facility, New York).

U.S. District Court
TEMPORARY RELEASE

Greaves v. State of N.Y., 958 F.Supp. 142 (S.D.N.Y. 1997). An inmate brought a § 1983 action against corrections officers and others alleging that he was wrongly found guilty of disciplinary charges, removed from temporary release, and placed in solitary confinement in violation of his constitutional rights. The district court found that the inmate's due process rights were not violated by his detention for two days pending a disciplinary hearing, nor by his detention in solitary confinement. (Fishkill Corr. Facil., Temp. Release Program, New York)

U.S. District Court
SEGREGATION

Harris v. Keane, 962 F.Supp. 397 (S.D.N.Y. 1997). A state prison inmate brought a § 1983 action against corrections officers and officials. The district court granted summary judgment for the defendants, finding that the inmate's confinement in keeplock for a total of 23 days did not implicate a liberty interest for the purposes of a due process claim. The court also found that a corrections officer had probable cause to order a urinalysis test of the inmate where the officer had smelled marijuana from a gallery below him, and other corrections officers reported that the inmate was the only person in the gallery at that time. (Oneida Correctional Facility, New York)

U.S. District Court
EVIDENCE

Hayes v. McBride, 965 F.Supp. 1186 (N.D.Ill. 1997). An inmate petitioned for a writ of habeas corpus, challenging sanctions imposed in a prison disciplinary hearing. The district court granted the petition, finding that the inmate was denied due process. The court found that a demotion in the inmate's credit time-earning class and deprivation of his previously earned credit time were liberty interests that could not be deprived without due process. According to the court, the inmate's alleged admission that a yellow-orange substance found in his cell during a shakedown was alcohol was insufficient to establish that the inmate had possessed an intoxicant absent evidence establishing that the substance found in the cell was an intoxicant. (Westville Correctional Facility, Indiana)

U.S. District Court
DUE PROCESS
WITNESS
PUNISHMENT

Henard v. Newkirk, 987 F.Supp. 691 (N.D.Ind. 1997). A state prison inmate sought federal habeas corpus relief, challenging his one-year disciplinary segregation. The district court held that the inmate's segregation did not constitute an atypical and significant hardship necessary to create a constitutionally protected liberty interest. The court also held that state procedures to protect substantive federal rights were not in themselves substantive rights and failure to follow the procedures did not bear on this habeas matter. The inmate had alleged due process violations because he was denied the opportunity to call all of his requested witnesses. He also asserted that he and the other African-American inmate charged in the incident received one year of segregation while the five white inmates received only six months. (Indiana State Prison, Michigan City, Indiana)

U.S. District Court
DUE PROCESS
EVIDENCE
WITNESS
POLYGRAPH

Hester v. McBride, 966 F.Supp. 765 (N.D.Ind. 1997). A state prison inmate petitioned for a writ of habeas corpus challenging a disciplinary proceeding. The district court held that the inmate's loss of earned credit time created a liberty interest that could not be deprived without due process, but that the inmate had received requisite due process protection during a conduct adjustment board's (CAB) hearing. The court found that sufficient evidence supported the CAB decision and that the inmate's due process rights were not violated by the CAB's refusal to administer polygraph examinations of witnesses, nor by the non-disclosure of confidential witnesses' identities or testimony. The court also held that the inmate could not maintain a claim of ineffective assistance based on the performance of a lay advocate in the disciplinary hearing. (Westville Correctional Facility, Indiana)

U.S. District Court
DOUBLE JEOPARDY
DUE PROCESS

Howard v. Pierce, 981 F.Supp. 190 (W.D.N.Y. 1997). An inmate brought a § 1983 action against prison officials alleging violation of his substantive due process rights as the result of a second disciplinary proceeding initiated after a state court had overturned a prior finding of guilt. The district court granted summary judgment in favor of the prison officials, finding that the prosecution of a second disciplinary proceeding after the inmate had been convicted in court of murdering a prisoner did not violate substantive due process. A state court had overturned a prior guilty finding for the same incident and ordered expungement, but the inmate was subsequently convicted for the murder of a prisoner. (Southport Correctional Facility, New York)

- U.S. District Court
SEGREGATION
RETALIATION
- Husbands v. McClellan, 957 F.Supp. 403 (W.D.N.Y. 1997). An inmate brought a civil rights action seeking redress for an allegedly false disciplinary ticket issued against him and alleging due process violations in his prison disciplinary hearing. The court found that the inmate failed to state a claim for retaliation under the civil rights statute. The court held that the inmate's six-month confinement in segregated housing following a disciplinary hearing did not implicate a liberty interest under the Fourteenth Amendment so as to allow the inmate to maintain a civil rights action premised on alleged procedural due process violations in the hearing. The court also found that the fact that the inmate's punishment included loss of one year of good-time credit was not sufficient to establish a liberty interest, where the guilty finding was eventually administratively reversed and the good-time credit was restored. (Southport Correctional Facility, New York)
- U.S. District Court
ISOLATION
SEGREGATION
- 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
DUE PROCESS
LIBERTY INTEREST
SEGREGATION
FALSE CHARGES
- Leslie v. Doyle, 125 F.3d 1132 (7th Cir. 1997). A state prison inmate brought a civil rights action against corrections officials alleging he was placed in disciplinary segregation as the result of baseless charges filed by a prison guard. The district entered judgment in favor of the officials and the appeals court affirmed. The appeals court found that the inmate's confinement in disciplinary segregation for 15 days was not sufficiently serious to be considered cruel and unusual punishment for Eighth Amendment purposes—even if the inmate had not committed the charged offense. The court also found that placing the inmate in disciplinary segregation for 15 days based on unfounded charges did not violate due process. According to the appeals court, "This case raises disturbing questions about the nature and extent of the constitutional rights that protect state prisoners from the arbitrary and arguably lawless acts of state prison officials." The inmate was exonerated by a prison administrative board of charges that he was insolent, but this exoneration occurred well after the inmate had served his 15-day term in disciplinary segregation. (Joliet Correctional Center, Illinois)
- U.S. Appeals Court
DUE PROCESS
WITNESS
DRUG TESTING
- Lusz v. Scott, 126 F.3d 1018 (7th Cir. 1997). A prisoner filed a § 1983 action against prison officials alleging they violated his due process rights in a prison disciplinary hearing. The district court dismissed the action, finding that the prisoner's claims were barred by a rule making his claim for damages not cognizable under § 1983 if a judgment in the prisoner's favor would necessarily imply the invalidity of his disciplinary conviction or sentence. The inmate alleged he was denied the opportunity to call requested witnesses and he was refused the opportunity to take a drug test to prove he did not smoke marijuana. (Lincoln Correctional Center, Illinois)
- U.S. Appeals Court
DUE PROCESS
PUNISHMENT
- Madison v. Parker, 104 F.3d 765 (5th Cir. 1997). A state prison inmate brought a § 1983 action against prison officials, alleging violation of his constitutional rights as the result of his punishment for misconduct. The district court dismissed the inmate's claims and the inmate appealed. The appeals court vacated and remanded, so that the district court could determine if the inmate was eligible under state law for mandatory supervised release based on good conduct credits and whether the statutory good conduct scheme created a liberty interest protected by due process. If a liberty interest was created, the district court would determine whether imposition of the loss of 30 days of good conduct time satisfied due process. The court found that the imposition of 30 days of commissary restriction and 30 days of cell restriction as punishment for the inmate's misconduct did not implicate due process concerns. (Beto I Unit in Tennessee Colony, Texas)
- U.S. District Court
RETALIATION
- Marshall v. Fairman, 951 F.Supp. 128 (N.D.Ill. 1997). A former inmate of a county jail brought a pro se federal civil rights action against jail employees alleging he had been wrongfully disciplined and assaulted by jail employees. The district court held that allegations of assault against the jail employees arose only to the level of negligence and were not actionable. But the court found that the inmate's allegations that an officer made up charges that resulted in the inmate being placed in disciplinary segregation stated a civil rights claim, and that the officer was not entitled to qualified immunity. (Cook County Jail, Illinois)
- U.S. Appeals Court
RETALIATION
- McLaurin v. Cole, 115 F.3d 408 (6th Cir. 1997). An inmate brought a § 1983 action against a corrections officer alleging that the officer issued a major misconduct ticket to the inmate in retaliation for a grievance the inmate had filed against the officer. The inmate's grievance had claimed that the officer destroyed his legal materials and deprived him of his religious books. The district court dismissed the action and the appeals court affirmed. The appeals court held

that the inmate failed to show that his filing of a grievance was a substantial or motivating factor behind the officer's issuance of a misconduct ticket. (State Prison of Southern Michigan)

U.S. Appeals Court
DUE PROCESS
GOOD-TIME

Miller v. Selsky, 111 F.3d 7 (2nd Cir. 1997). A state inmate brought a civil rights action challenging his segregation in disciplinary confinement for 125 days. The district court granted summary judgment for the prison officials and the inmate appealed. The appeals court vacated and remanded, finding that the U. S. Supreme Court decision in Sandin v. Conner did not create a per se blanket rule that disciplinary confinement may never implicate a liberty interest. (Bare Hill Correctional Facility, New York)

U.S. District Court
DUE PROCESS
SEGREGATION

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. Appeals Court
GOOD TIME
DUE PROCESS

Ragan v. Lynch, 113 F.3d 875 (8th Cir. 1997). An Iowa prison inmate brought a § 1983 action against prison officials alleging violation of his rights in connection with a disciplinary hearing. The district court granted summary judgment in favor of the officials and the inmate appealed. The appeals court affirmed, upholding the district court's determination that the disciplinary committee erroneously interpreted a disciplinary rule, resulting in the inmate's loss of good time credits, but that this error did not constitute a due process violation entitling the inmate to damages. The court noted that since there was a state procedure available to remedy the committee's mistake, that error alone did not amount to denial of due process, and any injury suffered by the inmate was remedied when his good-time credits were restored by the state court. (Iowa State Penitentiary)

U.S. District Court
HEARING IMPAIRED
INTERPRETER

Randolph v. Rodgers, 980 F.Supp. 1051 (E.D.Mo. 1997). A hearing impaired inmate filed an action against corrections officials alleging violation of his rights under various state and federal laws from the lack of a sign language interpreter. The district court held that both the Americans with Disabilities Act (ADA) and the Rehabilitation Act applied to state prisons. The court found that failure to provide a qualified sign language interpreter during non-emergency medical care, educational programs, disciplinary and classification hearings violated ADA and the Rehabilitation Act. The court noted that accommodations which consisted of patience by prison staff and the use of written communications were not sufficient and that interpreters were available at a reasonable cost. (Jefferson City Correctional Center, Missouri)

U.S. District Court
EVIDENCE
DUE PROCESS

Rice v. McBride, 967 F.Supp. 1097 (N.D.Ind. 1997). An inmate petitioned for a writ of habeas corpus alleging due process violations in connection with a prison disciplinary hearing. The district court denied the petition and dismissed the case, finding that the inmate had received requisite due process protections in his hearing. The court held that the failure of the disciplinary board or the investigator to obtain a statement from the inmate's wife and provide the statement to the inmate did not invalidate the board's finding that the inmate had threatened her life and that of her boyfriend. (Lakeside Correctional Facility, Indiana)

U.S. District Court
WORK

Rowold v. McBride, 973 F.Supp. 829 (N.D.Ind. 1997). A prisoner petitioned for habeas corpus relief from his conviction in a disciplinary proceeding. The prisoner alleged that he was ordered to perform extra work duty on his religious day of rest. The district court held that the record supported the guilty finding under the "some evidence" standard. The court found that the prison's interest in assigning extra work duty to the inmate was legitimate and that prison officials did not have to implement other alternatives to prove that the regulation was the least restrictive means available. The court found that it was neither arbitrary nor irrational to require inmates to perform additional work duty in response to various violations they commit while incarcerated. (Plainfield Corr. Facil., Indiana Youth Center)

U.S. Appeals Court
GOOD TIME
WITNESS
EVIDENCE

Sweeney v. Parke, 113 F.3d 716 (7th Cir. 1997). A state prisoner filed a habeas corpus petition challenging disciplinary sanctions imposed against him, including the loss of earned time credit. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that the prisoner was afforded due process in connection with his disciplinary hearing and that some evidence supported the disciplinary board's decision. The court found that under Indiana law, state prison inmates have a protected liberty interest in earned good time credits. The court found that the prisoner was not entitled to more than the 24 hours he had been given to plan his defense, and that the prisoner did not request witnesses at the time he was notified of the disciplinary hearing. (Indiana State Prison)

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
SEGREGATION
LIBERTY INTEREST

Thomas v. Ramos, 130 F.3d 754 (7th Cir. 1997). A prison inmate brought a § 1983 action against prison officials alleging violation of his due process rights in connection with his confinement for approximately 70 days in a segregated cell, and for the alleged denial of opportunities to exercise in a prison yard while he was in segregated confinement. The district court entered summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate's 70-day confinement in disciplinary segregation did not implicate liberty concerns within the meaning of the due process clause. The court also held that the official who allegedly refused to allow the inmate to exercise in the yard while he was in segregation was entitled to qualified immunity because the lack of exercise did not violate the inmate's clearly established rights. According to the court, there was evidence that the inmate could have engaged in some exercise in his cell, he may have missed some opportunities for yard time by choosing to visit the medical unit, and during part of his confinement all inmates were prevented from using the yard as part of a "lockdown" status. According to the court, a prison inmate's lack of exercise may rise to a constitutional violation in certain limited circumstances where movement is denied and muscles are allowed to atrophy and the health of the inmate is threatened. The court also found that the inmate did not have a protectible liberty interest in his loss of commissary privileges. (Stateville Correctional Center, Illinois)

U.S. District Court
EVIDENCE
DUE PROCESS

Thompson v. Hawk, 978 F.Supp. 1421 (D.Kan. 1997). An inmate challenged his prison disciplinary conviction for possession of a weapon by petitioning for a writ of habeas corpus. The district court denied the petition, finding that the "constructive possession" rule--under which an inmate was considered responsible for anything found in his cell absent sufficiently exculpatory evidence--satisfied the "some evidence" standard regarding a sharpened plastic kitchen utensil that was found in a light fixture in the inmate's cell. According to the court, application of the constructive possession rule was not defeated by the claim that prison officials failed to search the cell for contraband prior to assigning prisoners to the cell. The court also held that the inmate's procedural due process rights were not violated by the officials' refusal to allow the inmate discovery of evidence. The inmate had requested access to shakedown records showing when the light fixture was last searched and kitchen records indicating when the sharpened utensil was taken. (United States Penitentiary, Leavenworth, Kansas)

U.S. District Court
RETALIATION

Torricellas v. Poole, 954 F.Supp. 1405 (C.D.Cal. 1997). An inmate brought a § 1983 action against prison officials and a fellow prisoner alleging violation of her constitutional rights when a Christmas party was held in a prison visiting room when she was present. The inmate complained about the propriety of the party and was subsequently charged with a disciplinary violation. The district court held that the Christmas party did not violate the inmate's First Amendment rights. The court found that the inmate failed to show that retaliation for her filing of grievances was the substantial and motivating factor behind the bringing of disciplinary charges against her. (Calif. Institution for Women, Frontera, California)

U.S. District Court
PLACEMENT IN
SEGREGATION
DUE PROCESS
EQUAL PROTECTION

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

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
RECLASSIFICATION

Asquith v. Volunteers of America, 1 F.Supp.2d 405 (D.N.J. 1998). A state prisoner sued corrections officials and operators of a halfway house claiming violation of his due process rights as the result of his termination from a work release program. The district court granted summary judgment in favor of the defendants, finding that the prisoner did not have a protected liberty interest in remaining in a work release program. The court noted that

termination from the work release program did not alter the duration of confinement, but only affected the conditions of confinement. According to the court, the prisoner did not lose "core values of unqualified liberty" when he was terminated from a work release program that, although outside prison walls, placed strict limitations and heavily qualified privileges on participants. The court also held that the prisoner did not have a federal civil rights claim arising from the alleged failure to return his personal property upon his termination from the program, absent the lack of an adequate postdeprivation remedy. (New Jersey Department of Corrections and Volunteers of America)

U.S. District Court
CORPORAL
PUNISHMENT
RESTRAINTS
PUNISHMENT

Austin v. Hopper, 15 F.Supp.2d 1210 (M.D.Ala. 1998). Inmates in a state prison system brought a class action suit under § 1983, challenging several of the system's the Prison Litigation Reform Act (PLRA) and the settlement was approved. The agreement called for a complete and permanent cessation of the practice of chaining prisoners together. Inmates on chain gangs had been shackled by leg irons in groups of five, separated by eight feet of chain between them, were required to wear white uniforms with "Chain Gang" printed in black, and were taken to public highways or work sites where they performed manual labor in ten-hour shifts. The court found that an automatic 90-day denial of visitation for inmates assigned to a shock incarceration program did not violate their First Amendment right to visitation. The inmates in the program were recidivists and parole violators. According to the court, the denial of visitation promoted the legitimate penological objectives of deterrence and rehabilitation in a common-sense way, and the inmates had mail and telephone calls as an alternative means of communication. The court held that the practice of disciplining inmates who refused to work or who were disruptive by chaining them to a "hitching post" was cruel and unusual punishment. The inmates experienced actual, significant pain while shackled to the post and were denied access to basic human needs such as shelter, water, and toilet facilities. The court declined to approve a proposed toilet facilities settlement in response to the inmates' claims that inmates on work squads were not provided with adequate toilet facilities. (Alabama Department of Corrections)

U.S. Appeals Court
ASSISTANCE
WITNESS

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

U.S. District Court
DUE PROCESS

Black v. Selksy, 15 F.Supp.2d 311 (W.D.N.Y. 1998). An inmate challenged his disciplinary confinement. The district court held that the length and conditions of the inmate's confinement did not implicate a liberty interest, and that the timing of the prisoner's hearing was consistent with a 14-day rule. The court noted that although the disciplinary hearing was recommenced and concluded on the 15th day following the writing of the misbehavior report, the timing was consistent with a rule requiring the hearing to be held within 14 days because the hearing had been commenced six days after the report was written and the inmate had consented to an initial adjournment of the hearing. (Southport Correctional Facility, New York)

U.S. District Court
FOOD
PUNISHMENT

Brazil v. Bartlett, 998 F.Supp. 236 (W.D.N.Y. 1998). A prison inmate brought a pro se § 1983 action against prison officials after being placed in a cell with a plexiglass shield and being placed on a restricted diet. The court held that placement of the inmate in a cell with a plexiglass shield and imposition of a restricted diet after he threw feces at a prison employee did not violate the Eighth Amendment. The court found that the inmate had received all of the procedural protections he was due, and any defects in the initial disciplinary determination were cured by a rehearing. The court held that the restrictions were imposed in a good-faith effort to maintain prison discipline, as a response to the incident, and were not imposed maliciously and sadistically to cause harm. The inmate's restricted diet consisted of a "Nutriload" and raw cabbage, and was not cruel and unusual punishment according to the court as long as the inmate received nutritionally adequate food. (Elmira Correctional Facility, New York)

U.S. District Court
GOOD TIME
DUE PROCESS
NOTICE

Evans v. Deuth, 8 F.Supp.2d 1135 (N.D.Ind. 1998). A state prisoner petitioned for habeas corpus relief, which was conditionally granted by the district court. The court held that the prisoner's due process rights were violated in a disciplinary proceeding where the original charge was changed on the day of the disciplinary hearing, so that the prisoner did not have 24-hour notice of the charge on which he was convicted. The prisoner lost 180 days of earned credit time as the result of his disciplinary conviction. The state defendants had argued that the original charge of "Giving Anything of Value" and the substitute charge of extortion described the same conduct and that the defense was the same. (Pendleton Correctional Facility, Indiana)

U.S. Appeals Court
INTERPRETER

Franklin v. District of Columbia, 163 F.3d 625 (D.C.Cir. 1998). Spanish-speaking prisoners incarcerated in eight District of Columbia correctional facilities brought a class action under § 1983 alleging that the District violated their First, Fifth and Eighth Amendment rights as well as federal and local statutes by failing to provide qualified interpreters when they appeared at parole and disciplinary hearings and when they sought medical care. The district court found that the District violated the Fifth and Eighth Amendments and entered an injunction. The appeals court vacated in part and reversed in part. The appeals court held that the prisoners lacked standing to assert due process challenges regarding parole hearings for misdemeanants because they did not name any members of the class who went before the parole board as misdemeanants and did not understand the proceedings because of lack of proficiency in English. Upon learning that the authority for parole of felons had been transferred to the United States Parole Commission since the district court had ruled, the appeals court stated that "why neither of the parties, and why especially the District of Columbia never alerted us to this statute is beyond comprehension." The appeals court found that failure to provide interpreters at all disciplinary hearings, adjustment board hearings, housing determinations, and classification decisions did not violate due process. The appeals court also found that the District's failure to provide interpreters for prisoners during medical consultations was not cruel and unusual punishment. (District of Columbia)

U.S. District Court
RETALIATION

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
SEGREGATION
GOOD TIME

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
FOOD

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. 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 Corr. Facility, N.Y.)

U.S. District Court
ASSISTANCE

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

U.S. District Court
DUE PROCESS
SEGREGATION

Mullins v. Smith, 14 F.Supp.2d 1009 (E.D.Mich. 1998). An inmate who was found guilty of attempted substance abuse and placed in temporary segregation filed a pro se § 1983 action alleging deprivation of his liberty interest in violation of due process. The district court dismissed the complaint, finding that the while the inmate had exhausted all administrative remedies, his disciplinary segregation did not constitute a deprivation of a protected liberty interest. (Central Complex of the State Prison of Southern Michigan, Jackson)

U.S. District Court
DUE PROCESS
PLACEMENT IN
SEGREGATION

Rodriguez v. McGinnis, 1 F.Supp.2d 244 (S.D.N.Y. 1998). An inmate brought a § 1983 action against corrections officials alleging violation of his due process rights by the imposition of a 17-day keeplock confinement sanction upon him. The court found that 17-day placement in keeplock was not atypical nor a significant

hardship, and that officials were entitled to qualified immunity on the due process claim. The inmate also alleged that an officer violated his Eighth Amendment rights by stepping on his back and kicking him in his lower back numerous times without provocation while he was handcuffed. The district court held that the inmate stated an Eighth Amendment claim with regard to the excessive force allegations. (Downstate Correctional Facility, New York)

U.S. District Court
DUE PROCESS
PUNISHMENT

Spicer v. Collins, 9 F.Supp.2d 673 (E.D.Tex. 1998). A state prisoner brought a § 1983 action against prison officials and staff. The district court dismissed the case. The court found that the prisoner was not entitled to due process during institutional disciplinary proceedings that result in punishment in the form of cell and commissary restrictions, as these did not impose a significant or atypical hardship in relation to the ordinary incidents of prison life. (Stiles Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. Appeals Court
LENGTH OF
SEGREGATION

Sylvester v. Hanks, 140 F.3d 713 (7th Cir. 1998). A prisoner petitioned for habeas corpus relief, challenging a prison conduct board's decision that found he had conspired to incite a riot and which ordered him to spend three years in disciplinary segregation. The district court denied the petition and the appeals court affirmed. The court found that "some evidence" supported the finding that the prisoner had been involved with the riot, and that due process did not require the prison to compel unwilling witnesses to give testimony at hearings that concerned only the prisoner's custody status, not his length of confinement. (Indiana)

U.S. Appeals Court
WITNESS
GOOD TIME

Whitlock v. Johnson, 153 F.3d 380 (7th Cir. 1998). An inmate brought class action claims against a prison under § 1983 alleging due process violations because he was denied the right to call witnesses during a disciplinary hearing. The district court entered judgment for the plaintiff class and enjoined the application of the prison's witness policy. The appeals court affirmed in part and vacated in part. The appeals court held that the prison's policy of denying virtually all requests for live witnesses at disciplinary hearings that could result in revocation of an inmate's good-time credits, except where a witness already happened to be present, lacked the refinement required to survive constitutional muster under the due process clause. The court held that the prison's practice of interviewing requested witnesses and summarizing their testimony in unsworn reports was not a legitimate means of "calling a witness" in disciplinary hearings when live testimony would otherwise be feasible. While the appeals court upheld the district court's ban on applying the witness policy in the future, it revoked the district court's order that called for reopening previous disciplinary decisions in which inmates' good-time credits were revoked because that part of the order exceeded the scope of relief available to inmates under § 1983. (Stateville Correctional Center, Illinois)

1999

U.S. District Court
SOLITARY CONFINEMENT
EXERCISE

Bass v. Perrin, 170 F.3d 1312 (11th Cir. 1999). State inmates brought a § 1983 action against prison officials challenging prison practices which suspended outdoor exercise periods for inmates who are subject to solitary confinement. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court held that the denial of outside exercise time did not violate the Eighth Amendment nor equal protection. The court noted that the pain suffered as the result of the complete denial of outdoor exercise for inmates in solitary confinement was neither wanton nor unnecessary and had penological justification in light of the violence demonstrated by the inmates. The court added that although the inmates were deprived of a state-created liberty interest, they were afforded due process because they had received written notice of the charges after being placed in the yard suspension list and they were repeatedly made aware of the reasons in writing. (Florida State Prison, Starke, Florida)

U.S. Appeals Court
DUE PROCESS
EVIDENCE
EXPUNGEMENT

Burnsworth v. Gunderson, 179 F.3d 771 (9th Cir. 1999). A prisoner filed a § 1983 action alleging violation of his due process in a disciplinary conviction for escape. The district court found no due process violation but ordered the conviction expunged from his prison records. The appeals court affirmed, holding that due process was violated when a prison disciplinary board convicted the inmate of escape after a hearing at which "no shred of evidence of the inmate's guilt was presented." The appeals court noted that expungement was the appropriate remedy. (Arizona State Prison Complex, Tucson)

U.S. District Court
RETALIATION

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

not entitled to punitive damages because there was no evidence that the officers were motivated by evil motive or intent or that they acted with reckless or callous indifference to the prisoner's federally-protected rights. (Eastern Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS

Jenkins v. Haubert, 179 F.3d 19 (2nd Cir. 1999). A former inmate brought a § 1983 action against a corrections employee who allegedly violated the inmate's right to due process in the course of disciplinary proceedings. The district court dismissed the action but the appeals court vacated the decision and remanded the case. The appeals court held that a former prisoner may bring a § 1983 action to challenge the validity of a disciplinary or administrative sanction that does not affect the overall length of his confinement, without having to show that criminal proceedings terminated favorably in the prisoner's favor. According to the court, "conditions of confinement" is not a term of art, but simply encompasses all conditions under which a prisoner is confined for his term of imprisonment, and any deprivation that does not affect the fact or duration of the prisoner's overall confinement is necessarily a condition of that confinement for the purposes of § 1983. (New York State Department of Correctional Services)

U.S. Appeals Court
DUE PROCESS
SEGREGATION

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
RESTRAINTS

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

U.S. District Court
ASSISTANCE

Nelson v. Michalko, 35 F.Supp.2d 289 (W.D.N.Y. 1999). A prisoner brought a § 1983 action against corrections officers and prison officials alleging he was denied an inmate assistant at a disciplinary hearing. The district court dismissed the case, finding that a hearing officer's refusal to provide the prisoner with an inmate assistant did not rise to the level of a due process violation. (Southport Correctional Facility, New York)

U.S. District Court
ADA-Americans with
Disabilities Act
INTERPRETER
HEARING IMPAIRED

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 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
PRETRIAL DETAINEES
DUE PROCESS
SEGREGATION

Rapier v. Harris, 172 F.3d 999 (7th Cir. 1999). A pretrial detainee brought a § 1983 action against a sheriff, county jail employees and a police detective claiming constitutional violations during his detention. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that although it is permissible to punish a pretrial detainee for misconduct while in pretrial custody, that punishment can be imposed only after affording the detainee some sort of procedural protection. The defendants had kept the detainee in segregation as punishment for his conduct while confined, but he did not receive a written notice or a hearing, or any other process. His misconduct continued while he was in solitary confinement, resulting in a variety of interdepartmental reports and memoranda, and

he remained there for 270 consecutive days. During this time his phone and commissary privileges were suspended for periods of time, he was denied writing materials, he received no access to recreational facilities, and he was denied showers and personal hygiene items. But the appeals court held that the detainee was not deprived of "anything necessary for his sustenance." The appeals court granted qualified immunity to the defendants, finding that the law was not sufficiently clear at the time to apprise the sheriff and employees that procedural safeguards were required. (Vigo County Jail, Indiana)

U.S. Appeals Court
WORK
EQUAL PROTECTION

Shehee v. Luttrell, 199 F.3d 295 (6th Cir. 1999). A prisoner sued prison employees and officials claiming violation of his constitutional rights in connection with his termination from a prison work assignment. The district court denied the defendants' motion to dismiss but the appeals court reversed and remanded. The appeals court held that officials who were not involved in the inmate's termination from his commissary job and whose only roles involved the denial of administrative grievances or the failure to act, were not liable under § 1983. The appeals court also held that the commissary supervisor and warehouse foreman could not be liable on the inmate's claims of termination from his job in retaliation for exercise of his First Amendment right in filing grievances, where they neither fired nor had the authority to fire the inmate from his job, despite the contention that they instigated the firing. The inmate had alleged that the supervisor and foreman harassed him by fabricating an allegation against him because he refused to participate in an alleged kickback scheme. The appeals court held that even if true, these allegations did not implicate the inmate's First Amendment rights. The court noted that all of the inmates who worked in the commissary were accused of attempting to make alcohol after rotting fruit was found in the refrigerator. (Federal Correctional Institution, Manchester, Kentucky)

U.S. District Court
RETALIATION
PUNISHMENT

Turner v. Johnson, 46 F.Supp.2d 655 (S.D.Tex. 1999). A state prisoner petitioned for habeas corpus relief challenging the outcome of three prison disciplinary hearings. The district court denied the petition. The court held that a prisoner has no constitutional right to organize a prison work shutdown or to circulate a petition facilitating such an action. The prisoner's own admissions and copies of the work stoppage materials were more than adequate, according to the court, to sustain the conclusions of hearing officers that the prisoner was guilty of disciplinary offenses for attempting to organize a prison work shutdown. (Wynne Unit, Walker County, Texas)

U.S. District Court
RETALIATION

Wells v. Wade, 36 F.Supp.2d 154 (S.D.N.Y. 1999). An inmate brought a pro se § 1983 action alleging that his confinement for 13 days in a pre-hearing "keeplock" status violated his civil rights. The district court denied qualified immunity for one prison official, finding that the inmate had alleged intentional violations of clearly established and recognized rights. The inmate alleged that he was confined in pre-hearing detention for 13 days on the basis of a false disciplinary report filed by the officials in retaliation for the inmate's filing of a grievance against the official. (Woodbourne Correctional Facility, New York)

2000

U.S. District Court
ACCESS TO COURTS
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
WORK

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
PUNISHMENT

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 Eighth 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
SEGREGATION

Edwards v. Johnson, 209 F.3d 772 (5th Cir. 2000). A detainee alleged he was deprived of his due process and First Amendment rights when he was given fifteen days of disciplinary segregation after being found to have had unauthorized contact with a member of the general public by handing a flier to a visitor without permission. The district court dismissed the detainee's actions and the appeals court affirmed. The appeals court held that the detainee's 11-day pre-hearing detention and 15-day disciplinary detention did not violate the detainee's due process rights. The detainee had handed a member of a group who was touring the prison a note that stated "Welcome to Louisiana, home of the INS Terrorist-Styled Concentration Camp where all constitutional rights are dispensed solely on the basis of national origin." (Federal Detention Center, Oakdale, Louisiana)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

Gaither v. Anderson, 236 F.3d 817 (7th Cir. 2000). A state prisoner who was disciplined for theft petitioned for habeas corpus relief. The district court denied the petition and the appeals court affirmed. The appeals court found that a security videotape, a corrections officer's report indicating that the videotape showed the prisoner taking a mattress, and a second officer's statements regarding the prisoner's possession of the mattress, provided "some evidence" as required to support the prison disciplinary board's decision. The court held that the disciplinary board's refusal to allow the prisoner to view the videotape did not warrant habeas relief. (Indiana State Prison)

U.S. Appeals Court
DRUG TESTING
GOOD TIME

Henson v. U.S. Bureau of Prisons, 213 F.3d 897 (5th Cir. 2000). A federal prisoner petitioned for habeas corpus relief challenging the loss of good time credit as the result of a disciplinary proceeding. The district court denied the petition and the appeals court affirmed. The appeals court held that the prisoner did not have a due process right to a second test of the residue from his pipe that had tested positive for marijuana, after a urinalysis test of the prisoner came back negative. The inmate had lost fourteen days of good time credit and lost visiting, commissary and telephone privileges for thirty days. (Federal Bureau of Prisons)

U.S. Appeals Court
RETALIATION

Johnson v. Stovall, 233 F.3d 486 (7th Cir. 2000). A state prisoner filed a pro se § 1983 action alleging that prison employees violated his Eighth and Fourteenth Amendment rights and that a prison nurse retaliated against him for his filing of a grievance against her. The district court dismissed the complaint but the appeals court reversed and remanded the case, finding that the retaliation claim could not be dismissed as frivolous. The appeals court found that the prisoner's allegations permitted the inference that the nurse filed false disciplinary charges against him in retaliation for his action of filing a grievance against her. (Stateville Correctional Center, Illinois)

U.S. District Court
DUE PROCESS

Madera v. Goord, 103 F.Supp.2d 536 (N.D.N.Y. 2000). A state prisoner brought a § 1983 action against a corrections commissioner and correctional officers, alleging due process violations arising from a cell search and disciplinary hearing. The district court granted summary judgment for the defendants. The district court held that the failure of an officer to sign a misbehavior report was not a due process violation. The court found that the fact that the same official both issued the initial order to search the prisoner's cell and presided over the resulting disciplinary hearing did not constitute a due process violation. According to the court, the prisoner had no constitutional right to have a separate investigating and hearing officer. (New York State Department of Correctional Services)

U.S. Appeals Court
GOOD TIME
PUNISHMENT

Malchi v. Thaler, 211 F.3d 953 (5th Cir. 2000). A state prisoner filed a petition for habeas corpus relief based on the alleged denial of his due process rights in connection with a disciplinary proceeding. The district court granted the petition and the state appealed. The appeals court reversed, finding that the prisoner's thirty day loss of commissary privileges and cell restriction as the result of a disciplinary action did not implicate due process concerns. The court also found that the effect of the change in the prisoner's good-time earning status upon the timing of his release was too speculative to afford him a constitutionally recognized right to a particular time-earning status. (Telford Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. District Court
EVIDENCE
GOOD TIME

Mayers v. Anderson, 93 F.Supp.2d 962 (N.D.Ind. 2000). A state prisoner petitioned for a writ of habeas corpus challenging the loss of good time credits. The district court found that the prison adjustment board violated the prisoner's due process rights when it failed to review a security videotape which the prisoner claimed would establish his innocence, or to state on the record that viewing the tape would be hazardous to institutional safety or correctional goals. According to the court, a state prisoner had to be given the opportunity to request documentary and videotape evidence either at the screening stage of prison disciplinary proceedings or at the hearing itself. The inmate had been deprived of ninety days of earned good time credit. (Indiana State Prison)

- U.S. District Court
RETALIATION
RULES
- 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. District Court
EVIDENCE
DUE PROCESS
- Piggie v. Hanks, 98 F.Supp.2d 1003 (N.D.Ind. 2000). A state prisoner petitioned for a writ of habeas corpus after a prison conduct adjustment board found him guilty of sexual assault and sentenced him to disciplinary segregation and recommended a demotion in his good time credit class. The district court granted the petition, finding that the inmate was entitled to have the board either consider a videotape that may have recorded the incident at issue or to have the board state on the record why it would not do so. The court noted that the videotape was available at the time the hearing was held and the prisoner had made a timely request for it to be viewed by the board. (Indiana State Prison)
- U.S. Appeals Court
DUE PROCESS
- U.S. v. Chappel, 208 F.3d 1069 (8th Cir. 2000). An inmate challenged disciplinary actions in a § 1983 suit. The district court dismissed the case and the inmate appealed. The appeals court reversed and remanded, finding that the district court erred in dismissing the inmate's denial-of-due-process claim. The appeals court noted that a challenge to a disciplinary hearing that alleged errors in procedure, not challenging the result, was cognizable under § 1983. The inmate alleged that correctional officers conspired to deprive him of his due process rights by failing to notify him of the charges against him, failing to escort him to scheduled hearings and falsely reporting that the inmate had waived his right to be at the hearings. (Arkansas Department of Correction)
- U.S. District Court
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
DUE PROCESS
EVIDENCE
INFORMANT
- Broussard v. Johnson, 253 F.3d 874 (5th Cir. 2001). A state prisoner applied for a writ of habeas corpus challenging a prison disciplinary conviction on due process grounds. The district court granted the petition conditionally, and the appeals court affirmed. The appeals court held that the prison disciplinary board violated the prisoner's right to due process by considering a confidential informant's tip as probative evidence, where the officer who testified concerning the tip had no knowledge of the confidential informant's identity or any facts supporting his reliability. The appeals court also found that the fact that bolt cutters were found in an area in which the prisoner worked, but to which approximately one hundred inmates had access, was insufficient to satisfy the due process requirement of "some evidence" to support the prison disciplinary charge of possession of contraband intended for use in an escape. (Texas Department of Corrections, Institutional Division, Eastham Unit)
- U.S. Appeals Court
RETALIATION
- 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. Appeals Court
"BAD" TIME
LIBERTY INTEREST
PUNISHMENT
- Diaz v. Kinkela, 253 F.3d 241 (6th Cir. 2001). A prisoner applied for habeas corpus relief, challenging his incarceration for the "bad time" portion of his sentence. The district court dismissed the application and the appeals court affirmed, finding that the application was moot because the prisoner had been released, and that the prisoner was not entitled to a sentence reduction. The prisoner's sentence had been extended in response to his bad behavior while confined, under the provisions of a state statute that was subsequently found to be unconstitutional. (Southern Ohio Correctional Facility)

U.S. Appeals Court
RETALIATION

Farver v. Schwartz, 255 F.3d 473 (8th Cir. 2001). An inmate brought a § 1983 action against prison officials alleging that harassment from correctional officers prompted a urine test which resulted in his loss of good time credits, change of class, and relocation. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that the inmate stated a claim under § 1983 with respect to allegedly false disciplinary charges and allegedly retaliatory relocation. The inmate had been relocated 250 miles from his home after he questioned an officer's right to deny him legal assistance. The inmate had previously filed a grievance against another officer that allegedly resulted in false disciplinary charges. (Cummins Unit, Arkansas Department of Correction)

U.S. District Court
EVIDENCE

Gayle v. Lucas, 133 F.Supp.2d 266 (S.D.N.Y. 2001). A former prisoner brought a § 1983 action against state correctional officers, alleging they issued false and retaliatory misbehavior reports against him. The district court entered summary judgment for the defendants, finding that uncontradicted evidence indicated that the prisoner committed the offenses for which he had been disciplined. (Sing Sing Correctional Facility, New York)

U.S. Appeals Court
INTERPRETER
GOOD TIME

Gonzales-Perez v. Harper, 241 F.3d 633 (8th Cir. 2001). A prison inmate who was a Spanish-speaking native of Cuba brought a § 1983 action against a prison hearing officer who conducted disciplinary hearings which led to the revocation of the inmate's good time credits, alleging that failure to provide an interpreter for all hearings had violated his constitutional rights. The district court dismissed the action and the appeals court affirmed. The appeals court noted that the inmate had received the assistance of an interpreter every time he had requested it and that an administrative law judge who presided over numerous hearings had testified that he believed the inmate's English skills were sufficient to understand and respond to the proceedings. (Iowa State Penitentiary)

U.S. District Court
DUE PROCESS
RESTITUTION

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. The court also found that fact issues as to whether the inmate received procedural due process during a disciplinary hearing precluded summary judgment. The inmate was working for Impact Design, a private for-profit corporation operating within the confines of the Lansing Correctional Facility (Kansas). Impact employed inmates under the provisions of federal laws and regulations administered by the U. S. Department of Justice through the Prison Industry Enhancement Certification Program (PIECP). One of the PIECP requirements compels inmate workers to be paid the prevailing wage in the community for their labor. The inmate's job was to inventory spools of thread used in Impact's embroidery business and provide management with an accurate count of their stock. The inmate alleged that he was attacked by another inmate while he was working. The following day he was charged by prison officials with violating two prison regulations--fighting, and poor work performance. The inmate was subsequently found guilty of the fighting charge and was sentenced to 21 days in disciplinary segregation. The inmate was charged by prison officials with deliberately miscalculating a thread inventory that resulted in a loss of customer orders. The inmate argued that he was unable to complete the inventory because he was attacked by another inmate. An employee of Impact requested restitution for its losses and the prison disciplinary board ordered the inmate to pay \$2,965 in restitution. The inmate's prison account was frozen as a result of the judgment. (Lansing Corr'l Facility, Kansas)

U.S. Appeals Court
EVIDENCE
PUNISHMENT

Hudson v. Johnson, 242 F.3d 534 (5th Cir. 2001). A prisoner filed a habeas corpus petition alleging that he was unconstitutionally incarcerated because a prison disciplinary board, without any evidence, found him guilty of committing riot and revoked his good time credits. The district court denied the petition and the appeals court affirmed. The appeals court held that an officer's identification of the prisoner as a participant in a riot constituted "some evidence" and that the prisoner's loss of 3,530 days of good time credit was warranted. (Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
DUE PROCESS
GOOD TIME

Montgomery v. Anderson, 262 F.3d 641 (7th Cir. 2001). A state prisoner filed for habeas corpus relief alleging that the state had violated the Due Process Clause of the Fourteenth Amendment when it placed him in disciplinary segregation and reduced his credit-earning class. The district court denied the petition and the appeals court affirmed. The appeals court held that the alleged inadequacies of the prison disciplinary board's finding of facts did not deny the prisoner due process, where the board explicitly relied on a conduct report and investigation which supplied details. The court noted that state prisoners have "more than a subjective hope for good-time credit" in a system that initially puts every prisoner in a class which allows good-time credit to accrue unless there is a violation of an enumerated rule. (Indiana State Prison)

U.S. Appeals Court
PUNISHMENT

Pearson v. Ramos, 237 F.3d 881 (7th Cir. 2001). A state prisoner brought a § 1983 action against the superintendent of a prison's disciplinary segregation unit, seeking damages for harm allegedly suffered as the result of being denied access to outdoor exercise for a year. The district court entered judgment upon jury verdict for the prisoner, and the superintendent appealed. The appeals court reversed, finding that the imposition of four consecutive 90-day denials of prison yard privileges for serious violations of prison disciplinary rules was not cruel and unusual punishment. The court noted that even if the sanctions had been found to be cruel and unusual, the prisoner was not entitled to punitive damages or to a finding of liability on the part of the superintendent. The district court jury had awarded the prisoner \$15,000 in compensatory damages and \$50,000 in punitive damages, but the judge had cut the punitive damages award to \$15,000. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
POLYGRAPH
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
NOTICE
DUE PROCESS
INFORMANTS

Taylor v. Rodriguez, 238 F.3d 188 (2nd Cir. 2001). An inmate brought a suit alleging that various prison officials deprived him of due process in placing him in close custody, a housing status that involved severely restricted privileges, for an indefinite period of time. The district court entered summary judgment in favor of the defendants and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that a prison disciplinary notice that told the inmate he was being considered for close custody was too vague to satisfy due process. The court also found that a determination that the inmate was a member of a security risk group was not supported by "some evidence" because the hearing officer stated that her conclusion was based, in part, on information received from confidential informants, but she had made no independent assessment of their credibility. (Garner Correctional Institution, Connecticut)

2002

U.S. District Court
DRUG TESTING

Alexander v. Gilmore, 202 F.Supp.2d 478 (E.D.Va. 2002). Two prisoners, one a current prisoner and one a former prisoner, sued a prison and officials. The district court found that a prisoner's placement in segregated housing following an institutional conviction for being under the influence of drugs, even though a confirmatory urine test was not conducted, was not sufficiently severe to support an Eighth Amendment claim. The court also held that the prisoners did not state a claim under the False Claims Act (FCA) by alleging that the prison had obtained federal funding for drug testing by falsely certifying that the requirements for testing and disposal of samples were being followed. According to the court, the prison, and employees who were acting in their official capacities, were exempt from the FCA and there was no showing that the employees were acting in their individual capacities. (Virginia Department of Corrections)

U.S. Appeals Court
RETALIATION

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. District Court
PRETRIAL DETAINEE
PUNISHMENT
RESTRAINTS

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 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. District Court
CONDITIONS OF
SEGREGATION

Dixon v. Goord, 224 F.Supp.2d 739 (S.D.N.Y. 2002). A state prisoner brought a § 1983 action alleging cruel and unusual punishment. The district court granted summary judgment in favor of the defendant, finding that the prisoner's placement in a Special Housing Unit for ten months as

punishment for assaulting an officer was not cruel and unusual punishment. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
IMPARTIALITY

Eads v. Hanks, 280 F.3d 728 (7th Cir. 2002). A state prisoner filed a habeas corpus petition alleging violation of his due process rights during a prison disciplinary hearing because one member of the disciplinary committee was allegedly the "live in boyfriend" of a female prison guard who was a witness against the inmate. The district court denied the petition and the appeals court affirmed. The appeals court held that the prisoner failed to make a timely complaint of his concerns about the witness. (Indiana)

U.S. District Court
NOTICE
IMPARTIALITY

Espinal v. Goord, 180 F.Supp.2d 532 (S.D.N.Y. 2002). A state inmate filed a § 1983 action against prison official alleging violation of his Eighth and Fourteenth Amendment rights. The district court denied the inmate's motion that asked the court to order him released from punitive segregation. The court found that the inmate received adequate notice of the disciplinary charges against him and that the hearing officer was sufficiently fair and impartial. The inmate had asserted that the misbehavior report that notified him of the charges against him should have indicated the basis of knowledge or veracity of confidential informants who provided information, but the court held that such information was not necessary to apprise the inmate of the nature of the charges against him. The court also found that the hearing officer was not rendered insufficiently fair and impartial because he was the supervisor of the security staff who responded to the incident. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
EVIDENCE
WITNESS

Espinoza v. Peterson, 283 F.3d 949 (8th Cir. 2002). A federal inmate sought judicial review of a prison disciplinary proceeding in which he lost 13 days of "good time" credit for fighting with another inmate, alleging his due process rights were violated in his disciplinary hearing. The district court denied habeas relief and the inmate appealed. The appeals court affirmed, finding that the refusal of prison authorities to disclose the identity of a confidential informant did not violate the inmate's procedural due process rights. The court also held that officials' refusal to transport a prisoner, who allegedly was involved in a fight with the inmate, to testify at the disciplinary hearing did not violate the inmate's procedural due process rights. The court noted that the hearing was delayed to obtain a written statement from the prisoner and that transporting the prisoner posed an obvious security risk. (Federal Corr'l Institute at Sandstone, Minnesota)

U.S. District Court
DUE PROCESS
RETALIATION

Farid v. Goord, 200 F.Supp.2d 220 (W.D.N.Y. 2002). An inmate brought a § 1983 action against correctional officers and prison officials, alleging free speech and procedural due process violations under the First and Fourteenth Amendments. The district court granted summary judgment, in part, for the defendants. The court held that the inmate, who had circulated a petition, engaged in protected conduct even though the prison had a grievance process that could have been used. The petition concerned allegations that an officer failed to allow inmates adequate time to finish their breakfast. The court noted that no regulation barring petitions was in effect at the time. The court denied summary judgment on the issue of whether the inmate's right to petition the government and right to free speech were violated by officers when they determined, independent of the facility's media review committee, that a copy of the petition the inmate had sent to the prison superintendent was unauthorized, and that two satirical articles written by the prisoner, one of which was published by local news media, were detrimental to the order of the facility. The court denied qualified immunity to officers on the inmate's retaliation claim, finding that the inmate's right not to suffer retaliation for engaging in protected First Amendment activities was clearly established at the time of the alleged retaliation. The inmate alleged that the officers retaliated with searches of his cell and work area, and with disciplinary charges for authoring and possessing certain articles. (Attica Correctional Facility, New York)

U.S. Appeals Court
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
PRETRIAL
DETAINEES

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. Supreme Court
PUNISHMENT

Hope v. Pelzer, 122 S.Ct. 2508 (2002). An Alabama prison inmate who was allegedly handcuffed to a "hitching post" twice in 1995 for disruptive conduct, brought a civil rights action against three

correctional officers involved in the incidents. The federal appeals court held that the hitching post's use for punitive purposes violated the Eighth Amendment but found that the officers were entitled to qualified immunity. The U.S. Supreme Court reversed, finding that the defense of qualified immunity was not available to the officers at the summary judgment phase of the case. The Court found that the prisoner's allegations, if true, established an Eighth Amendment claim for cruel and unusual punishment because the alleged conduct would be "unnecessary and wanton" infliction of pain for reasons "totally without penological justification." The Court held that a reasonable officer would have known that using a hitching post as the prisoner alleged was unlawful. During a 2-hour period in May of 1995, when the inmate was handcuffed to the hitching post, the inmate was offered drinking water and a bathroom break every 15 minutes. He was handcuffed above shoulder height, and when he tried moving his arms to improve circulation, the handcuffs cut into his wrists, causing pain and discomfort. In a second incident after a fight with an officer at his chain gang's worksite in June, he was subdued, handcuffed, placed in leg irons, and transported back to the prison. Once there, he was ordered to take off his shirt, thus exposing himself to the sun, and spent seven hours on the hitching post. He was given one or two water breaks, but no bathroom breaks, and he claimed that an officer taunted him about his thirst. (Alabama Department of Corrections)

U.S. District Court
DUE PROCESS
WITNESS
EVIDENCE

Hoskins v. McBride, 202 F.Supp.2d 839 (N.D.Ind. 2002). A state prisoner filed for a writ of habeas corpus, challenging revocation of earned good time credits and demotion in his credit time earning class, following a disciplinary proceeding. The district court denied the petition, finding that prison officials did not deny the prisoner due process by failing to compel witnesses to name a "certain offender" named in a tip regarding drug trafficking, nor by denying him permission to view security videos and other physical evidence. The court noted that while prisoners have the right to call witnesses to testify on their behalf at disciplinary hearings when it is consistent with institutional safety and correctional goals, but that this is not an unlimited right. (Indiana State Prison in Michigan City)

U.S. Appeals Court
DUE PROCESS
EVIDENCE

Martinez v. Hedrick, 36 Fed.Appx. 209 (7th Cir. 2002). A state prisoner filed for a writ of habeas corpus challenging a disciplinary board's reprimand for entering into an unauthorized contract. The district court denied the petition and the appeals court affirmed. The appeals court held that the inmate was not denied due process. The alleged contract was a subscription to *Men* magazine, unauthorized because the subscription was not prepaid. The court noted that it has not yet addressed whether § 2254 or the Due Process Clause are implicated when an inmate alleges only that a prison decision caused his *retention in*, rather than *demotion to*, a particular credit-earning class. (Indiana)

U.S. Appeals Court
EVIDENCE
DUE PROCESS

Moffat v. Broyles, 288 F.3d 978 (7th Cir. 2002). A state prisoner who had been found guilty by prison authorities of attempted trafficking, and who lost 180 days of good time credit as a result, petitioned for a writ of habeas corpus. The district court denied the petition and the appeals court affirmed. The appeals court held that evidence in the prison disciplinary proceeding was sufficient to support the guilty finding. (Indiana)

U.S. Appeals Court
WITNESS
DUE PROCESS

Pannell v. McBride, 306 F.3d 499 (7th Cir. 2002). A state inmate sought federal habeas corpus relief after a prison conduct adjustment board found him guilty of possessing a deadly weapon. The district court denied the petition and the inmate appealed. The appeals court vacated and remanded, finding that the inmate's claim was prematurely rejected by the district court. The inmate had requested, in writing, that the officers who had searched his cell be allowed testify in his disciplinary hearing, but prison officials denied his request for witnesses. The appeals court held that the officers' could have aided the inmate's defense that he was unaware that a television in his cell contained weapons. As a result of his disciplinary hearing, the inmate had been sanctioned with two years in disciplinary segregation and a demotion of his credit-earning class. (Wabash Valley Correctional Facility, Indiana)

U.S. Appeals Court
EVIDENCE

Piggie v. McBride, 277 F.3d 922 (7th Cir. 2002). A state prisoner filed a habeas corpus petition alleging he was denied due process of law because a prison disciplinary board failed to review a videotape of the incident that gave rise to his disciplinary charges. The district court denied the petition and the prisoner appealed. The appeals court vacated and remanded, finding that district court erred in dismissing the petition. The district court had found that the prisoner had failed to submit a timely request for the surveillance videotape and therefore the refusal of the disciplinary board to review it was not a violation of the prisoner's due process rights. The prisoner was charged with sexually assaulting a female correctional officer by squeezing her buttocks when she was passing him in a prison hallway. The prisoner contended that he requested review of the surveillance videotape at a disciplinary interview and was told that he would have to secure a court order. (Indiana)

U.S. District Court
DUE PROCESS
RECORDS

Sand v. Steele, 218 F.Supp.2d 788 (E.D.Va. 2002). An inmate brought a § 1983 action against corrections officers, alleging cruel and unusual punishment in connection with disciplinary procedures. The inmate had been found guilty of violating prison rules when he exposed his genitals in a public area of the prison. The prisoner appealed the disciplinary action and a regional corrections official found the tape of the disciplinary hearing to be damaged and unable to be reviewed. The official overturned the disciplinary decision on technical grounds. The inmate

sued the officers who initially reported the violation, but the district court dismissed the action. (Sussex I State Prison, Virginia)

U.S. District Court
NOTICE
DUE PROCESS

Seehausen v. Van Buren, 243 F.Supp.2d 1165 (D.Or. 2002). A federal prisoner brought a habeas corpus claim challenging the imposition of discipline for phoning a former inmate who was on home confinement. The district court held that imposing discipline on the prisoner for violation of a telephone policy of which he did not have fair notice, infringed on his due process rights. The court noted that the inmate did not have notice that the policy, which prohibited contacting former inmates in halfway houses, also extended to telephoning former inmates confined at home. (Federal Correctional Institution-Sheridan, Oregon)

U.S. District Court
PRETRIAL DETAINEE
PUNITIVE SEGREGATION
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
PRETRIAL DETAINEE
SEGREGATION

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. Appeals Court
DUE PROCESS

Torres v. Fauver, 292 F.3d 141 (3rd Cir. 2002). A former state 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. Appeals Court
DUE PROCESS
PUNISHMENT

Ware v. Morrison, 276 F.3d 385 (8th Cir. 2002). An inmate brought a *Bivens* action against corrections officials alleging due process violations in connection with denial of visitation privileges. The district court denied the officials' motion for summary judgment and granted a partial temporary injunction. The appeals court reversed and remanded, and vacated the injunction. The appeals court held that the disciplinary loss of visitation privileges between the inmate and his wife, without a hearing, was within the ordinary incidents of confinement and did not violate the inmate's due process rights. (Federal Prison Camp, Fort Nellis, Arkansas)

U.S. District Court
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)

2003

U.S. Appeals Court
RESTITUTION

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
DUE PROCESS
WITNESS
SEGREGATION

Cardenas v. Lewis, 66 Fed.Appx. 86 (9th Cir. 2003). [unpublished] A pretrial detainee brought a pro se § 1983 action against a county, alleging deliberate indifference to a substantial risk to his safety. 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 officers who placed the detainee in a holding tank with an inmate, from whom the detainee was supposed to be kept separated, were not acting with deliberate indifference, even if the officers were negligent in failing to check the detainee's "keep separate" wristband. The court found that the detainee was deprived of due process in disciplinary proceedings in which he was allegedly not allowed to call witnesses, to have his exculpatory statement read, or to tape the hearings, and was placed in segregation without a hearing. (Yakima County Department of Corrections, Washington)

U.S. District Court
WORK
TRANSFER
LIBERTY INTEREST

Childers v. Maloney, 247 F.Supp.2d 32 (D.Mass. 2003). A state prisoner sued prison officials alleging violation of his due process rights during a prison disciplinary hearing. The district court dismissed the action. The court held that the prisoner's liberty interests were not infringed upon by his loss of visitation for six weeks, placement in isolation, and transfer to another prison as discipline for violation of prison regulations. The court found that the prisoner did not have a liberty interest, under state law, in his position as "Minority Co-Camp Chairman." The court noted that the statute authorizing the corrections commissioner to establish work programs in prisons did not indicate any limitations on the commissioner's discretion to suspend or revoke the prisoner's position. (Old Colony Correctional Center, Massachusetts)

U.S. District Court
SOLITARY CONFINEMENT

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
SEGREGATION
DUE PROCESS

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
DUE PROCESS
RETALIATION

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. Appeals Court
SEGREGATION
VISITS
RELIGIOUS SERVICES

Phillips v. Norris, 320 F.3d 844 (8th Cir. 2003). A state prison inmate brought a § 1983 action against corrections officials, alleging violations of his rights based on his disciplinary confinement on the charge of carrying contraband. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that denial of contact visitation, exercise privileges, and religious services for 37 days during segregation, did not amount to an atypical and significant hardship. The court noted that the inmate was allowed to have non-contact visitation, and that he was free to exercise his religion within his cell. The inmate had been caught carrying tobacco, rolling papers and lighters. (East Arkansas Regional Unit, Arkansas Department of Correction)

U.S. Appeals Court
WITNESS
DUE PROCESS
EQUAL PROTECTION

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 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. District Court
PRETRIAL
DETAINEES

Tilmon v. Prator, 292 F.Supp.2d 898 (W.D.La. 2003). A state inmate who was held in a county jail awaiting sentencing filed a § 1983 action, alleging civil rights violations when he was punished for possessing contraband in his cell. The district court dismissed the complaint and the inmate appealed. The appeals court reversed and remanded. On remand, the district court dismissed the action, finding that the inmate who had been convicted, but not yet sentenced, was not entitled to a hearing before being punished. The court held that the inmate had no liberty interest in not being placed in disciplinary segregation, and was therefore not entitled under the Due Process Clause to a hearing before such placement. The inmate was punished for possessing contraband in his cell. His punishment included eight hours confinement in a punitive cell, loss of telephone privileges, loss of visitation privileges, and loss of recreation privileges. (Caddo Correctional Center, Shreveport, Louisiana)

U.S. District Court
GOOD-TIME
DUE PROCESS

Tyler v. McCaughtry, 293 F.Supp.2d 920 (E.D.Wis. 2003). A state prisoner filed a petition for a writ of habeas corpus, claiming that his due process rights were violated when a prison disciplinary committee revoked his good time credits. The state moved to dismiss and the district court denied the motion. The court held that the summary judgment was precluded by a genuine issue of material fact as to whether the correctional facility's legal resources were the cause for the petitioner's default of federal claims in state court. (Dodge Correctional Institution, Wisconsin)

U.S. Appeals Court
RETALIATION
WORK

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. District Court
WITNESS
EVIDENCE

Whittington v. Vaughn, 289 F.Supp.2d 621 (E.D.Pa. 2003). A state prisoner who had been diagnosed as schizophrenic brought a § 1983 action against prison officials, alleging civil rights violations. The district court granted summary judgment for the officials. The court held that a unit manager's requests that the inmate take his psychotropic medication did not violate the inmate's due process rights. The court noted that although the inmate was urged to take his medication, and was punished for misbehavior that occurred when he was not taking his medication, and that he was never forcibly injected and was permitted to refuse medication. The court found that misconduct reports were "some evidence" that supported a hearing examiner's decisions to find the inmate guilty of misconduct, and that the examiner's denial of certain witnesses at the inmate's misconduct hearings did not violate the inmate's due process rights. (State Correctional Institution, Graterford, Pennsylvania)

2004

U.S. Appeals Court
WITNESS
GOOD-TIME

Brown v. Braxton, 373 F.3d 501 (4th Cir. 2004). A prisoner petitioned for federal habeas corpus relief from the loss of good time credits in a prison disciplinary hearing. The district court denied relief and the prisoner appealed. The appeals court affirmed, finding that the prison disciplinary hearing officer's refusal to allow the prisoner to call a fellow inmate as a live witness at a hearing was not contrary to, or an unreasonable application of clearly established federal law on the due process rights of inmates. The court noted that an inmate has a qualified right to call witnesses and present documentary evidence in his defense, but only when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals. (Red Onion State Prison, Virginia)

U.S. Appeals Court
EVIDENCE
GOOD TIME

Gamble v. Calbone, 375 F.3d 1021 (10th Cir. 2004). State inmates brought separate pro se actions for federal habeas corpus relief, each alleging that prison officials violated his due process rights by revoking earned credits in prison disciplinary hearings for a criminal act that he did not commit. The district court denied the petitions and the inmates appealed. The appeals court reversed and remanded, finding that the inmates were entitled to habeas relief on the grounds that revocation of their earned credits resulting from unsupported disciplinary convictions violated due process. (Great Plains Correctional Facility, Oklahoma)

U.S. Appeals Court
EVIDENCE
DUE PROCESS

Luna v. Pico, 356 F.3d 481 (2nd Cir. 2004). A state prisoner brought a § 1983 action against hearing officers, alleging that they deprived him of due process in disciplinary proceedings. The district court denied cross-motions for summary judgment and the parties appealed. The appeals court reversed and remanded. The appeals court held that the hearing officers' determinations violated the prisoner's due process rights, but that the officers were entitled to qualified immunity because a reasonable officer would not have known that the evidence relied upon in finding the prisoner guilty of stabbing another prisoner (a misbehavior report and a letter from an inmate claiming to have been stabbed), was clearly insufficient. (Fishkill Correctional Facility, New York)

U.S. Appeals Court
PRETRIAL
DETAINEES
SEGREGATION
LENGTH OF
SEGREGATION
PUNISHMENT

Magluta v. Samples, 375 F.3d 1269 (11th Cir. 2004). A former pretrial detainee brought an action against federal officials asserting constitutional claims relating to the conditions of his confinement. The district court dismissed several defendants for lack of jurisdiction and dismissed the case against the remaining defendants for failure to state a claim. The detainee appealed. The appeals court vacated and remanded. On remand, the district court dismissed the detainee's first amended complaint and the detainee appealed. The appeals court affirmed in part, vacated in part, and remanded. The appeals court held that the detainee stated a claim that he suffered unconstitutional conditions of confinement and that the defendants were not entitled to qualified immunity. The detainee alleged that he was confined under extremely harsh conditions, that he was placed in solitary confinement and locked in an extremely small closet-sized space, with minimal contact with other human beings for a prolonged time that exceeded 500 days. The detainee alleged that the harsh conditions were imposed solely for the sake of punishment. The court noted that ample federal caselaw existed at the time of the challenged conduct to give fair warning to officials that it was unconstitutional to hold a detainee in solitary confinement 500 days, for punishment, with virtually no procedural protection in the form of periodic reviews. (United States Penitentiary, Atlanta, Georgia)

U.S. Appeals Court
RELIGION

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. Appeals Court
SEGREGATION
DUE PROCESS

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
WITNESS

Pizarro Calderon v. Chavez, 327 F.Supp.2d 131 (D.Puerto Rico 2004). A federal prisoner sought a writ of habeas corpus, challenging the refusal of the federal Bureau of Prisons to reduce his sentence and loss of good time credits as the result of a prison disciplinary determination. The district court denied the prisoner's petition. The court held that the Bureau's decision not to reduce the prisoner's sentence upon his completion of a substance abuse program did not violate due process. The court also found that the prisoner was not prejudiced by any violation of his due process rights when he was not allowed to call a physician as a witness at his disciplinary hearing. The court noted that a prisoner has no absolute right to call live witnesses at a disciplinary hearing and that prison officials have wide discretion to refuse to call witnesses who are irrelevant, unnecessary, or who pose a security concern. The court cautioned that a prison policy would not withstand due process scrutiny if the prison employed a blanket ban on calling witnesses other than staff, rather than evaluating requests on a case-by-case basis. (Metropolitan Detention Center, Guaynabo, Puerto Rico)

U.S. Appeals Court
EVIDENCE
LIBERTY INTEREST
GOOD-TIME

Richards v. Dretke, 394 F.3d 291 (5th Cir. 2004). The district court granted habeas corpus to an inmate who challenged a guilty finding against him in a prison disciplinary hearing, and the state appealed. The appeals court reversed, finding that the evidence against the prisoner was more than sufficient to meet constitutional due process requirements for finding him guilty. The court noted that the evidence included an offense report and confidential report of the investigating officer, and the prisoner's own admissions. Identities of all of but one of the witnesses were known to the hearing officer and the prisoner was undisputedly present in the dayroom at the time of the incident. The court noted that denial of good-time credits created a liberty interest protected by procedural due process, where the prisoner was eligible under state law for release to mandatory supervision at a date determined in part by his accrued good conduct time. (Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. Appeals Court
DUE PROCESS
INFORMANTS
NOTICE

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. The court also held that the officials were not entitled to qualified immunity on the prisoner's due process claim based on the withholding of the substance of an informant's disclosures. (Green Haven Correctional Facility, New York)

U.S. District Court
WITNESS
EVIDENCE
DUE PROCESS

Thomas v. McBride, 306 F.Supp.2d 855 (N.D.Ind. 2004). A state prison inmate brought a habeas proceeding to challenge a finding of guilt at a prison disciplinary hearing. The district court denied habeas relief. The court held that the prison disciplinary board adequately explained its reasons for refusing to allow the inmate to call a witness, and that the board's finding of guilt was supported by some evidence. The court found that the inmate was not denied due process because he was not given an opportunity to review documentary evidence used to support the finding of guilt, and that the board's explanation satisfied the minimum requirements of due process. (Maximum Control Facility, Westville, Indiana)

U.S. Appeals Court
PRETRIAL
DETAINEES

Tilmon v. Prator, 368 F.3d 521 (5th Cir. 2004). A prisoner brought a civil rights action alleging due process violations in connection with prison disciplinary proceedings. The district court dismissed the action for failure to state a claim and the prisoner appealed. The appeals court affirmed, finding that a prisoner who has been convicted but who has not yet been sentenced has the same status as a sentenced prisoner for the purposes of analyzing whether the prisoner has a liberty interest in having certain procedural protections before being punished in connection with a prison disciplinary proceeding. The court found that the prisoner had no due process protected liberty interest implicated by his confinement in a punitive cell for eight hours without an administrative hearing. (Caddo Correctional Center, Louisiana)

2005

U.S. District Court
ASSISTANCE
DUE PROCESS
EVIDENCE
WITNESS

Alicea v. Howell, 387 F.Supp.2d 227 (W.D.N.Y. 2005). An inmate brought a § 1983 action against prison personnel, alleging constitutional violations in connection with a prison disciplinary proceeding. The district court granted summary judgment in favor of the defendants. The court held that the inmate's limited due process right to legal assistance was not violated, where he was provided with the assistance of a prison teacher and stated at a disciplinary hearing that he was satisfied with the assistance that he had received from her. The court concluded that the hearing officer was not biased against the inmate, and that there was some evidence to support the hearing officer's determination that the inmate was guilty of using drugs. The inmate had tested positive on a urinalysis test and corrections officers testified that the inmate had been given a clean, freshly-packaged sample jar. The court held that the due process clause did not require the hearing officer to call a facility physician to testify about whether it would have been possible for the inmate to produce urine containing a powdery substance. According to the court, the inmate never requested that a physician be called as a witness, and the officer who conducted the urinalysis testified that he sometimes received urine samples that were cloudy, and that substances causing the cloudiness would generally settle out after a while. (Orleans County Correctional Facility, New York State Department of Correctional Services)

U.S. District Court
APPEAL
DUE PROCESS

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. Appeals Court CONDITIONS OF SEGREGATION	<i>Lekas v. Briley</i> , 405 F.3d 602 (7 th 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. District Court EVIDENCE DUE PROCESS	<i>Phelps v. Tucker</i> , 370 F.Supp.2d 792 (N.D.Ind. 2005). A state prisoner brought a civil rights action against prison personnel alleging violating of his Fourteenth Amendment procedural due process rights. The district court granted summary judgment, in part, for the prisoner and in part for certain defendants. The court held that prison personnel did not “destroy” a surveillance videotape, for the purpose of the prisoner’s Fourteenth Amendment procedural due process claim that the tape was destroyed to prevent him from using it in his defense. The court noted that the tapes were recycled or reused in the normal course of business if not requested by the conduct adjustment board or an internal affairs officer within thirty days, and the tape had not been requested within the thirty days. The court found that prison personnel violated the prisoner’s Fourteenth Amendment procedural due process rights by denying his request for a video surveillance tape for his defense in a disciplinary hearing. The court noted that due process entitles prisoner to have exculpatory evidence disclosed unless its disclosure would unduly threaten institutional concerns. The court found that the prisoner’s claim was not extinguished by the reversal of his loss of good-time credits due to a successful administrative appeal. (Indiana)
U.S. Appeals Court PUNISHMENT FOOD	<i>Rodriguez v. Briley</i> , 403 F.3d 952 (7 th Cir. 2005). A state prison inmate brought a § 1983 action against corrections officials, alleging that they refused to let him out of his cell for meals and showers because he refused to comply with a rule that required prisoners to stow certain items while outside of their cells. The rule requires inmates to store certain of their belongings in a storage box in their cells, to enhance fire safety, facilitate cell searches, and otherwise promote safety and security. The inmate missed meals because he refused to comply with the rule. The district court granted summary judgment for the officials and the inmate appealed. The appeals court affirmed, finding that enforcing the stowage rule by forbidding exit from the cell was not cruel and unusual punishment, since the inmate had the option of simply complying with the rule. According to the court, the rule was a valid means of promoting the safety and security of the prison. (Illinois)
U.S. District Court PUNISHMENT RETALIATION	<i>Rodriguez v. McClenning</i> , 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. District Court WITNESS	<i>Shell v. Brzezniak</i> , 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 found that the prisoner had no colorable due process claim based on a disciplinary hearing officer’s failure to call two witnesses or to inquire about their refusal to testify. According to the court, the hearing officer had no authority to compel the inmate witnesses to testify, when they did not know the prisoner and did not want to get involved. (Attica, Green Haven, and Great Meadows Correctional Facilities, New York)
U.S. Appeals Court DUE PROCESS IMPARTIALITY WITNESS	<i>Surprenant v. Rivas</i> , 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. (Hillsborough County Jail, New Hampshire)

U.S. District Court
APPEAL
EXPUNGEMENT
SEGREGATION

Terrell v. Bassett, 353 F.Supp.2d 658 (E.D.Va. 2005). A prisoner brought a § 1983 action against prison officials, alleging violation of his due process rights when he was convicted of an institutional offense in disciplinary proceedings. The district court dismissed the action, finding that the prisoner was accorded due process by prison procedures. The court found that the prisoner's due process rights were not violated by his 30-day confinement in isolation prior to his successful administrative appeal, and that he suffered no undue hardship by having to pursue the appeals process to receive redress. (Virginia Department of Corrections)

U.S. Appeals Court
DUE PROCESS
EVIDENCE
GOOD-TIME

Wilson v. Jones, 430 F.3d 1113 (10th Cir. 2005). A state inmate petitioned for a writ of habeas corpus, challenging on due process grounds a misconduct conviction that caused him to be demoted to a non-credit-earning prisoner. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded, ordering the issuance of a writ on remand. The court held that the misconduct conviction reduced the inmate's credit-earning class in a manner that inevitably affected the direction of his sentence and therefore deprived the inmate of a liberty interest. According to the court, officials violated the inmate's due process rights by convicting him without any evidence. (Great Plains Correctional Facility, Oklahoma)

2006

U.S. District Court
EVIDENCE
WITNESS
DUE PROCESS
SEGREGATION
RETALIATION

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
ISOLATION
DUE PROCESS
ASSISTANCE

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) and 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. (Plymouth County Correctional Facility, Massachusetts)

U.S. Appeals Court
FOOD
ISOLATION
SEGREGATION
CLOTHING

Gillis v. Litscher, 468 F.3d 488 (7th Cir. 2006). A state prisoner brought a § 1983 claim against prison officials, alleging that a behavioral modification program imposed on him violated his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court vacated and remanded, finding that fact issues precluded summary judgment. According to the court, there were fact issues as to whether the prisoner, who was subjected to a behavioral modification program, was denied the minimal civilized measure of life's necessities and whether prison officials acted with disregard of a substantial risk of serious harm to the prisoner. The appeals court opinion opened with the following statement. "*Stripped naked in a small prison cell with nothing except a toilet; forced to*

sleep on a concrete floor or slab; denied any human contact; fed nothing but 'nutri-loaf'; and given just a modicum of toilet paper-four squares-only a few times. Although this might sound like a stay at a Soviet gulag in the 1930s, it is, according to the claims in this case, Wisconsin in 2002. Whether these conditions are, as a matter of law, only "uncomfortable, but not unconstitutional" as the State contends, is the issue we consider in this case." The facility is an all-segregation facility, designed to house recalcitrant inmates. At the time at issue in this case, the facility used a five-level system of inmate classification, with Level One being the most restrictive. All inmates were placed in Level One upon their arrival at the prison. (Wisconsin Secure Program Facility at Boscobel)

U.S. Appeals Court
WITNESS
DUE PROCESS

Grossman v. Bruce, 447 F.3d 801 (10th Cir. 2006). A pro se prisoner filed a habeas petition, challenging his sentence for a disciplinary conviction in a prison administrative hearing. The district court denied the petition and the prisoner appealed. The appeals court affirmed, finding that the due process error in denying the prisoner's request to call a corrections officer to testify at a hearing was harmless where the officer's testimony would have supported another officer's report of the riot incident, so that the testimony would not have aided prisoner's defense. The court found that no liberty interest was implicated when prison officials punished the prisoner for possession of less dangerous contraband by imposing seven days of segregation and 30 days of restriction time following a disciplinary hearing, and thus, the prisoner's due process rights were not violated, absent a showing that the prisoner lost any good-time credits, or that the segregation or restriction time imposed caused an atypical or significant hardship. (Hutchinson Correctional Facility, Kansas)

U.S. Appeals Court
HEARING

Hanks v. Prachar, 457 F.3d 774 (8th Cir. 2006). A former county jail detainee brought a § 1983 action against county jail officials, alleging violation of his due process rights in connection with the use of restraints and confinement, requesting damages and injunctive relief. The district court granted summary judgment in favor of the officials and the former detainee appealed. The appeals court affirmed the grant of summary judgment on the claims for injunctive relief, reversed the grant of summary judgment on the claims for damages, and remanded for further proceedings. The court held that the detainee's claim for injunctive relief was rendered moot by detainee's release from jail. The court found that summary judgment was precluded by genuine issues of material fact as to whether the detainee was restrained in shackles and chains or confined in a padded unit for the purpose punishment, or for valid reasons related to legitimate goals. The detainee alleged he was placed in four-point restraints, chained to a wall in a "rubber room," forced to shower in waist chains and shackles, and denied hearings before being punished. The detainee was 17 years old when he was admitted to the jail. (St. Louis County Jail, Minnesota)

U.S. Appeals Court
GOOD TIME
EVIDENCE

Johnson v. Finnan, 467 F.3d 693 (7th Cir. 2006). A state prison inmate sought federal habeas relief after a prison disciplinary board had imposed discipline, consisting of revocation of 30 days' good-time credit, for a lockdown infraction. The district court denied the petition and the inmate appealed. The appeals court reversed and remanded, finding that the district court should have held an evidentiary hearing, given the inmate's sworn testimony and extrinsic evidence that contradicted the disciplinary board's version of events. The inmate had asserted that he had unsuccessfully sought a continuance before the prison disciplinary board in order to obtain additional evidence, including a surveillance videotape, that would contradict the accuser's version of events. The court noted that a prison disciplinary board is entitled to resolve conflicts in the stories presented to it, in deciding to impose revocation of good-time credits as discipline, as long as some evidence supports the decision; however, the board is not entitled to prevent an inmate from offering material evidence. (Indiana Department of Corrections)

U.S. District Court
DUE PROCESS
INFORMANTS
LIBERTY INTEREST
SEGREGATION

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. The court held that the use of confidential information did not violate the inmate's procedural due process rights, where officials stated that disclosure of the source's identity would endanger the source or the institution's security, more than one source independently provided the same information, the source incriminated herself in criminal activity when providing the information, and part of the information provided by the source had already proven to be true. (California Institution for Women, Chino)

U.S. Appeals Court
DUE PROCESS
WITNESS
DRUG TESTING

Louis v. Department of Correctional Services of Nebraska, 437 F.3d 697 (8th Cir. 2006). Inmates and former inmates brought an action against a state corrections department and various department officials alleging that the method of collecting and testing urine samples for drug use violated their constitutional right to procedural due process. The district court entered judgment in favor of defendants and the inmates appealed. The appeals court found that due process in connection with testing of the inmates' urine for drugs did not require that the inmates sign and seal the specimens after collection, absent evidence that the collection protocols requiring that the collector label and seal the specimens resulted in erroneous deprivations of inmates' good-time credits. According to the court, even if collection procedures did not eliminate all possibility of mislabeled samples, they conformed to the practices used in private-sector workplace drug testing, and were adequate to ensure reasonably reliable results. The court concluded that the refusal of the corrections department to fund confirmatory drug testing of a prisoner's urine sample after initial testing yielded a positive result, when the prisoner denied using illicit drugs, did not violate a prisoner's due process rights. The court noted that the initial testing was 95 percent accurate and that a prisoner had the opportunity to obtain confirmatory testing at an independent laboratory at his own expense. The appeals court upheld the refusal of the corrections department to allow inmates to call lab technicians as witnesses at disciplinary hearings to testify about procedures used for drug testing of inmates' urine samples, finding that this practice did not violate a prisoner's due process rights. The court noted that inmates could present urinalysis laboratory reports prepared by the lab technicians, and the exclusion of technicians' testimony was justified by the department's need to manage the environment of the prison and maximize the productivity of lab technicians. (Nebraska State Penitentiary)

U.S. Appeals Court
RETALIATION

Moots v. Lombardi, 453 F.3d 1020 (8th Cir. 2006). A state prisoner sued various prison officials, alleging that they were deliberately indifferent to his serious mental health needs and that they retaliated against him for filing a grievance. The district court entered summary judgment for the officials and the prisoner appealed. The appeals court affirmed and held that: (1) the failure to house the prisoner with cellmates of his choosing did not constitute deliberate indifference to his serious medical needs, where the officials had ample reasons for their action, including safety concerns, and the officials had no reason to know that their housing choices would have a serious negative impact on the prisoner's mental health; (2) any failure to ensure that the prisoner's medications were promptly transferred to solitary confinement did not constitute deliberate indifference to his serious medical needs, absent a showing by the prisoner that he suffered harm as a result; (3) a conduct violation for fighting did not constitute retaliatory discipline, where the prisoner was bruised around his eye, and the fact that a conduct violation was later expunged did not mean that there was not some evidence for its imposition; and (4) transfer to another prison did not constitute disciplinary retaliation, where he disputed neither the computation of his classification score nor the conclusion that his score made him ineligible to remain at the prison from which he was transferred. (Missouri Eastern Correctional Center)

U.S. District Court
DUE PROCESS
SEGREGATION
IMPARTIALITY

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
EVIDENCE
LIVE TESTIMONY
GOOD TIME

Scruggs v. Jordan, 435 F.Supp.2d 869 (N.D.Ind. 2006). A state prisoner sought federal habeas relief after he lost 120 days of good time credit as a sanction at a prison disciplinary proceeding. The district court denied the petition. The court held that prison officials did not violate due process in the prison disciplinary proceeding when they amended the original violation, and that due process did not require disqualification of the chairman of the state prison disciplinary board because the chairman was not directly involved in the investigation of the charges against the prisoner. According to the court, the board's refusal to allow the prisoner to present his walking cane as evidence did not violate due process, where the prisoner had not made a request to present physical evidence at the disciplinary hearing, and was allowed to present his version of the incident. The court also noted that due process did not require live testimony of corrections officers at a prison disciplinary hearing, absent a showing by the prisoner that their testimony would have been any different if given live, or that he was prejudiced by the absence of live testimony. (Westville Correctional Facility, Indiana)

U.S. Appeals Court
DUE PROCESS
RETALIATION
ISOLATION

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. (Minnesota Sex Offender Program, Minn. Department of Human Services)

U.S. Appeals Court
RETALIATION

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
CRIMINAL
CHARGES

U.S. v. Shelton, 431 F.Supp.2d 675 (E.D.Tex. 2006). An inmate was convicted of forcibly assaulting a correctional officer, and a sentencing hearing was held. The district court held that a sentence of 36 months' imprisonment, exceeding the sentencing guidelines range of 12 to 18 months, was warranted for the inmate's conviction for forcibly assaulting a correctional officer by throwing feces and urine that struck the officer in the head, face, and chest. The court noted that the inmate's conduct was more than mere physical contact, and subjected the officer to the risk of a host of infectious diseases. The officer had to be treated with a cocktail of drugs to protect against such diseases, and the court held that the need for adequate deterrence was important due to prevalence of such assaults by prisoners. (Texas)

U.S. District Court
EXPUNGEMENT

White v. Ottinger, 442 F.Supp.2d 236 (E.D.Pa. 2006). A male county jail inmate sued a county, warden, deputy warden, and captain of corrections officers, claiming that their failure to protect him from a sexual assault by a female officer violated his constitutional and common law rights. The district court held that: (1) the county was not liable; (2) there was no violation of the inmate's substantive due process rights; (3) there was no violation of the inmate's equal protection rights; (4) officials had not conspired to deny the inmate's rights, in violation of the Civil Rights Act; and (5) the inmate was not falsely imprisoned when sent to solitary confinement for theft. According to the court, the corrections officer captain and assistant warden did not violate the substantive due process rights of inmate, when they did not expunge from his record a conviction for theft of underwear from the prison commissary, causing him to have an unfavorable early parole hearing. The court noted that the inmate had unquestionably stolen the underwear and the fact that another corrections officer was complicit did not affect the result, and the prisoner's parole denial could well have been based on the inmate's drug usage violations. (Montgomery County Correctional Facility, Pennsylvania)

2007

U.S. District Court
DUE PROCESS
GOOD TIME

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. Appeals Court
CRIMINAL
CHARGES
INVESTIGATION

Clemmons v. Armontrout, 477 F.3d 962 (8th Cir. 2007). A state prison inmate brought a § 1983 Fourteenth Amendment action against corrections officials, alleging *Brady* violations and reckless or intentional failure to investigate exculpatory leads with regard to a fatal prison stabbing, leading to the inmate's wrongful conviction for murder which was later negated by the Court of Appeals on his petition for habeas corpus. The district court denied, in part, the defendants' summary judgment motion, ruling that a penitentiary investigator was not entitled to qualified immunity. The inmate and the investigator's estate appealed. The appeals court affirmed in part and reversed in part. The court held that the state prison investigator enjoyed qualified immunity in the inmate's § 1983 due process action alleging that the investigator had committed a *Brady* violation by withholding exculpatory evidence in his investigation of a fatal prison stabbing, and allegedly failing to investigate a lead provided by a fellow inmate. According to the court, there was no evidence that the investigator had acted intentionally or recklessly, as opposed to negligently, given his conclusion that the fellow inmate was not credible, the fact that a corrections officer supplied an eyewitness statement implicating the inmate, and the lack of evidence of conscious suppression. The court found that the corrections officer who had conducted a brief initial investigation into a fatal prison stabbing had insufficient personal involvement to be potentially liable in the prisoner's § 1983 due process action, where the officer's work had been brief and limited, and the officer had handed over information he had obtained during his investigation to the investigator, who took over and conducted a full inquiry. (Missouri State Penitentiary)

U.S. Appeals Court
NOTICE
DUE PROCESS

Dible v. Scholl, 506 F.3d 1106 (8th Cir. 2007). A former prisoner brought a § 1983 action against state corrections officials, alleging that he was denied due process when he was issued inadequate disciplinary notice. The notice stated that confidential information indicated that the prisoner had "threatened and choked a citizen of the State of Iowa."

The district court denied the officials' motion for summary judgment and the officials appealed. The court held that the law was clearly established in 2006, for the purposes of qualified immunity, that the disciplinary notice did not comport with due process. (Residential Treatment Facility, Sioux City, Iowa)

U.S. District Court
EXPUNGEMENT

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

U.S. Appeals Court
WITNESS
EVIDENCE

Howard v. U.S. Bureau of Prisons, 487 F.3d 808 (10th Cir. 2007). A prisoner petitioned for habeas corpus relief, arguing that prison officials violated his due process rights during disciplinary proceedings. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the refusal of prison officials to allow the prisoner's witnesses to testify at his disciplinary hearing did not prejudice the prisoner, and thus did not violate his due process rights, where each witness submitted written statements, the witnesses provided a description of the fight underlying the disciplinary charge, and although the prisoner argued that one officer's statement was ambiguous, he did not demonstrate how further testimony would have aided his defense. But the court found that prison officials' refusal to produce and consider a videotape, which the prisoner contended would exonerate him as to the disciplinary charges, violated the prisoner's due process rights, where the officials offered no reason that producing the videotape would be hazardous to institutional safety. (United States Penitentiary, Florence, Colorado)

U.S. District Court
DUE PROCESS
EVIDENCE

Moreno v. Buss, 523 F.Supp.2d 878 (N.D.Ind. 2007). After exhausting administrative remedies, a state prisoner submitted a petition for a writ of habeas corpus pertaining to demotion in his credit time earning classification at a prison disciplinary hearing. The court held that the prisoner had a procedural due process right, consistent with security considerations, to present a sweatshirt as exculpatory evidence for the Disciplinary Hearing Board's (DHB) consideration and that the DHB's review of investigative files containing photographs of the sweatshirt was not sufficient to satisfy the prisoner's due process rights because review of photographs would not have allowed the DHB to determine the nature of the stains on the sweatshirt, which was the point at issue. The inmate alleged that the sweatshirt was stained with paint, not blood. The court found that the DHB's error in failing to allow the prisoner to present the sweatshirt as exculpatory evidence was harmful. According to the court, there was no evidence to support the DHB's finding that the prisoner was guilty of battery. The court noted that it was not necessary for the sweatshirt to be physically present at the hearing, so long as the DHB examined it before making a decision. (Indiana State Prison)

U.S. District Court
DUE PROCESS
WITNESS
RECORDS

Sweet v. Wende Correctional Facility, 514 F.Supp.2d 411 (W.D.N.Y. 2007). A state inmate filed a civil rights suit against a prison, disciplinary hearing officer and others. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that the inmate did not exhaust his administrative remedies on his due process claim concerning an alleged refusal to call witnesses. The court found that any right the inmate had to have witnesses testify at a hearing was not violated when the witnesses refused to give testimony. According to the court, the lack of a transcript of a prison disciplinary hearing did not violate due process. (Wende Correctional Facility, New York)

U.S. District Court
EVIDENCE
GRIEVANCE
RETALIATION

Wilson v. Greetan, 571 F.Supp.2d 948 (W.D.Wis. 2007). A prisoner brought a § 1983 action against a correctional officer who issued a conduct report and an officer who presided over the prisoner's disciplinary hearing, alleging that the issuing officer retaliated against him for exercising his right to free speech and to petition the government for redress of grievances. The prisoner alleged that the presiding officer was complicit in retaliation when he found the prisoner guilty at a hearing. The district court held that there was no evidence that the presiding officer found the prisoner guilty at the hearing out of a desire to further any retaliation that may have been initiated by the issuing officer. The court noted that the presiding officer was not required to consider any evidence at the hearing. The court held that the prisoner's speech--telling the issuing officer that he was corrupt--was a matter of public concern, but the prisoner's sole motivation in telling the issuing officer that he was corrupt was not to further a purely private interest, as would undermine a free speech claim. (Green Bay Correctional Institution, Wisconsin)

2008

U.S. Appeals Court
CORRESPONDENCE
GOOD-TIME
LANGUAGE
PUNISHMENT

Barrett v. Belleque, 544 F.3d 1060 (9th Cir. 2008). A prisoner brought a pro se § 1983 action alleging that prison officials violated his rights under the First and Fourteenth Amendments by punishing him for writing letters using vulgar and offensive racist language to describe prison officials. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded. The court held that the prisoner's allegations that the prison censored his outgoing mail and punished him for its contents stated a § 1983 claim that his First Amendment rights were violated. The prisoner had attempted to mail a series of letters to his grandmother and mother. The letters used vulgar and offensive racist language to describe prison officials. After reviewing the letters, prison officials cited

the prisoner for violation of various prison disciplinary rules, resulting in a loss of good time, revocation of certain privileges, and other punitive measures. The appeals court found that the district court's dismissal relied on an incorrect legal standard. (Oregon State Penitentiary)

U.S. District Court
RETALIATION
REVIEW OF
SEGREGATION

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. (California State Prison, Los Angeles County)

U.S. Appeals Court
DUE PROCESS
PRISONER ON
PRISONER
ASSAULT

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
GOOD TIME
WITNESS

Davis v. Silva, 511 F.3d 1005 (9th Cir. 2008). A state prisoner brought a habeas petition challenging a prison disciplinary proceeding in which he was assessed a 150-day forfeiture of good-time credit. The district court dismissed the petition for failure to exhaust and the prisoner appealed. The appeals court reversed, finding that the prisoner provided the state court with sufficient facts to exhaust his state court remedies. The court noted that exhaustion under the Antiterrorism and Effective Death Penalty Act (AEDPA) requires that a habeas petitioner fairly present his federal claims to the highest state court available and the petitioner describes in the state proceedings both the operative facts and the federal legal theory on which his claim is based so that the state courts have a fair opportunity to apply controlling legal principles to the facts bearing upon his constitutional claim. The court noted that exhaustion of state remedies under AEDPA does not require that a habeas petitioner present to the state courts every piece of evidence supporting his federal claims. According to the court the state prisoner's state habeas petition provided the state court with sufficient facts to address his claim that his due process right to call witnesses in a disciplinary proceeding was violated. The petition explicitly stated that the prisoner was denied his due process rights to a witness and made clear based on statute citations that the prisoner was charged with committing a battery upon someone who was not an inmate. The prisoner cited a statute governing denial and revocation of good-time credits, referred to a case holding that due process demands that an inmate be allowed to call witnesses in his defense in a disciplinary proceeding involving possible loss of good-time credits, and cited a regulation controlling disciplinary proceedings. (California Department of Corrections and Rehabilitation)

U.S. District Court
DUE PROCESS

Emerson-West v. Redman, 574 F.Supp.2d 433 (D.Del. 2008). A state inmate filed a motion for relief from the district court's order terminating a consent order entered in a class action that challenged prison conditions and disciplinary procedures. The inmate moved for a preliminary injunction and for summary judgment. The district court denied the motions. The court held that the inmate received adequate notice of prison officials' motion for relief from the consent order, and that termination of the consent order was warranted. The court noted that the inmate was not a named class member, the inmate's name never appeared in the case, officials mailed copies of their motion for relief to pro se plaintiffs who had appeared in the case and to the former attorney who represented the class, and the court reopened the case when an inmate filed a motion to vacate the judgment. According to the court, termination of the consent order was warranted under the provisions of the Prison Litigation Reform Act (PLRA), where the consent order encompassed the state's entire penal system of discipline and sanctions and there was no mention that it was entered to correct constitutional violations, particularly with respect to due process issues. The court noted that a subsequent United States Supreme Court decision provided clear guidance regarding prisoners' due process rights, and the consent order was not the least intrusive means to correct any alleged constitutional violation. (James T. Vaughn Correctional Center, Delaware)

U.S. District Court
EVIDENCE
IMPARTIALITY
INFORMANTS
NOTICE

Gauthier v. Dexter, 573 F.Supp.2d 1282 (C.D.Cal. 2008). A state prisoner filed a petition for habeas corpus challenging discipline imposed for trafficking in narcotics on prison grounds. The district court denied the petition, finding that the prisoner was given sufficient notice of the charges alleged against him, the officer at the prisoner's disciplinary hearing was impartial, and the prisoner's conviction was sufficiently supported by the informant's confidential statements. The court noted that prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of constitutional rights due to a defendant in such proceedings does not apply. The prison disciplinary committee determined that the prisoner distributed heroin from his cell window to other prisoners who sold it in the prison yard, supporting a drug trafficking violation and subsequent revocation of work credits. The court found that even though the determination was primarily based on statements from confidential informants, the informants had previously given reliable information, the information supporting the prisoner's violation was

independently corroborated, and the informants incriminated themselves through their statements. (California Men's Colony East)

- U.S. Appeals Court
LENGTH OF
SEGREGATION
REVIEW OF
SEGREGATION
- 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. Appeals Court
RETALIATION
EVIDENCE
- 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 and that an independent hearing officer also found the prisoner guilty of the violations. (Iowa State Penitentiary)
- U.S. District Court
EVIDENCE
INVESTIGATION
- Hernandez v. Selsky*, 572 F.Supp.2d 446 (S.D.N.Y. 2008). A prisoner brought a § 1983 action against a hearing officer who conducted prison disciplinary hearings at which the prisoner was disciplined, and a correction counselor who acted as his assistant and interpreter during the hearings. The district court granted summary judgment for the defendants. The court held that the hearing officer's decisions were supported by some evidence in the record, and that the counselor did not fail to perform investigatory tasks that the prisoner could have performed for himself. (Green Haven Correctional Facility, New York)
- U.S. District Court
DUE PROCESS
RETALIATION
- Jackson v. Onondaga County*, 549 F.Supp.2d 204 (N.D.N.Y. 2008). A jail inmate filed a pro se civil rights action against a county and two county jail deputies, alleging that his First, Eighth, and Fourteenth Amendment rights were violated as the result of filing a false disciplinary report. The district court granted summary judgment for the defendants. The court held that the inmate did not engage in protected speech, as required for a First Amendment retaliation claim, when he called a female deputy ugly and used profane language. (Onondaga County Jail, New York)
- U.S. Appeals Court
DISCIPLINARY
PROCEDURES
EVIDENCE
WITNESS
- Johnson v. Evinger*, 517 F.3d 921 (7th Cir. 2008). A state prisoner filed a § 1983 action against several correctional officials claiming that they retaliated against him because he tried to obtain evidence to defend himself against a disciplinary charge. The district court dismissed the action and the prisoner appealed. The appeals court affirmed. The court held that the prisoner forfeited his § 1983 due process claim because he failed to comply with the procedure for a prisoner to gather such evidence, as mandated by state prison regulations, which required the prisoner to submit questions to the disciplinary committee rather than confront witnesses directly. (Illinois Department of Corrections)
- U.S. District Court
DUE PROCESS
PROCEDURES
WITNESS
- Jones v. McDaniel*, 552 F.Supp.2d 1141 (D.Nev. 2008). A state prisoner sought a writ of habeas corpus seeking relief from sanctions imposed at two prison disciplinary hearings. The prisoner was sanctioned with 180 days of administrative segregation, loss of telephone privileges for 30 days, loss of canteen privileges, and referral for loss of 59 days of statutory good time. The district court granted the petition. The court held that there was no evidence to support the prisoner's convictions for violating prison disciplinary rules, as required to comply with the due process requirement that a factual basis be incorporated into a hearing officer's written statement. The court noted that the "written statement" requirement as to disciplinary proceedings against state inmates "is not a ritual that magically renders a disciplinary decision constitutional," but rather, a disciplinary board must explain the evidence relied upon, such that it is at very least possible to discern the factual basis of the conviction. According to the court, a hearing officer's denial of the prisoner's request to call the charging officer as a witness in the disciplinary hearing violated the prisoner's due process rights, so as to entitle the prisoner to habeas relief. (Ely State Prison, Nevada)
- U.S. District Court
DISCIPLINARY
PROCEDURES
EVIDENCE
- Kounelis v. Sherrer*, 529 F.Supp.2d 503 (D.N.J. 2008). A prisoner brought a § 1983 action alleging that various prison officers violated his Fourth, Fifth, Eighth, and Fourteenth Amendment rights. The court held that the prison defendants were under a duty to preserve the digital video recording of an altercation between the prisoner and prison staff, where the surveillance footage was relevant, not only to the prisoner's § 1983 action against the prison, but also to the prisoner's pending disciplinary proceeding. The court noted that the defendants were aware that a disciplinary hearing was imminent following the disputed altercation, that the prisoner had made repeated requests for the production of the evidence, and that the defendants should have been able to foresee the harm or prejudice that would have been caused by the non-preservation of the evidence. The court found that spoliation of evidence sanctions were warranted against the prison officials for their alleged failure to preserve the digital video recording. The court found that a genuine issue of material fact existed as to whether prison officials' use of force against the prisoner during an altercation was in good faith and in order to maintain discipline, precluding summary judgment in favor of the officials on the issue of whether the use of force exerted by the officials upon prisoner during the altercation violated the Eighth Amendment. (Northern State Prison, New Jersey)
- U.S. District Court
ACCESS TO COURT
DISCIPLINARY
PROCEDURES
RETALIATION
- 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
DISCIPLINARY
PROCEDURES
DUE PROCESS
RETALIATION
WITNESS

Pettus v. McGinnis, 533 F.Supp.2d 337 (W.D.N.Y. 2008). A state inmate brought a § 1983 action against New York State Department of Correctional Services (DOCS) employees, alleging they participated in a disciplinary proceeding against him which was initiated in retaliation for his having testified against a corrections officer at a disciplinary hearing involving another inmate. The defendants moved for summary judgment. The district court granted the motion. The court held that the prison officials were entitled to qualified immunity from the prisoner's § 1983 claim, since at the time of the disciplinary proceedings against the prisoner, it was not clearly established that an inmate's act of providing testimony on behalf of another inmate at the other inmate's disciplinary hearing was protected by the First Amendment. The court found that a corrections officer's filing of an alleged false misbehavior report against the inmate did not result in an atypical and significant hardship in relation to the ordinary incidents of prison life, as required for the alleged filing to have violated the inmate's due process rights. The inmate was sentenced to 30 days in keeplock as a result of the charges against him, and the finding of guilt on the charge did not lack evidentiary support. (New York State Department of Correctional Services)

U.S. Appeals Court
DUE PROCESS

Simpson v. Thomas, 528 F.3d 685 (9th Cir. 2008). A state inmate brought a § 1983 action against a corrections officer, alleging use of excessive force after the inmate failed to comply with the officer's orders. A jury trial resulted in a verdict in the officer's favor, and the district court denied the inmate's motion for a new trial. The inmate appealed. The appeals court reversed and remanded. The court held that the inmate was not precluded from testifying that the officer started the physical altercation by punching him, and that his subsequent actions were done in self-defense, even if such testimony was contrary to the result of a prison disciplinary proceeding in which the inmate was found guilty of battery on the officer and assessed 150 days of behavioral credit forfeiture. (California Medical Facility, Vacaville)

U.S. Appeals Court
CORRESPONDENCE
DISCIPLINE
DUE PROCESS

Smith v. Mosley, 532 F.3d 1270 (11th Cir. 2008). A prison inmate brought a civil rights action against a warden, assistant warden, and hearing review officer for allegedly retaliating against him for exercising his free speech rights in complaining of certain practices at the prison. The district court granted the defendants' motion for summary judgment, and the inmate appealed. The appeals court affirmed. The court held that the inmate's letter to the assistant warden, complaining that prisoners like himself, with "compromised immune systems," were required to go outside in "thirty-something degree temperatures, wearing substandard clothing," and that he was given a "diet composed of 95% starch" when prison officials knew that he was diabetic, constituted a protected exercise of his free speech rights. But the court held that a reasonable jury could not find that prison officials would not have disciplined the inmate but for his having filed such grievances. The court found that objective administrators standing in the prison officials' shoes would assume that the gist of what the inmate said in his letter and the language that he employed, which "reeked of disrespect for the administrators' authority, would be noised about the prison's population and, if ignored, could seriously impede their ability to maintain order and thus achieve the institution's penological objectives." (Easterling Correctional Facility, Alabama)

U.S. District Court
DUE PROCESS
FINE
SEGREGATION

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 there was no evidence that jail employees were aware of facts from which an inference could be drawn that the detainee faced a serious risk of harm by being celled with killers, robbers, and psychopaths, or that they actually drew such an inference, as required to establish deliberate indifference. 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. Appeals Court
PUNISHMENT

Walker v. Bowersox, 526 F.3d 1186 (8th Cir. 2008). A state prisoner brought a pro se § 1983 action against correctional officers. The district court granted summary judgment in favor of the officers and the prisoner appealed. The appeals court reversed in part and remanded. The appeals court held that summary judgment was precluded by fact issues as to whether corrections officers used reasonable force when they restrained the prisoner on a bench for 24 hours after he refused to accept a specific cell mate, and whether another corrections officer used reasonable force when he used pepper spray after the prisoner admittedly ignored the officer's repeated orders to hand over his food tray. (South Central Correctional Center, Missouri)

U.S. Appeals Court
GOOD-TIME

Wilson-El v. Finnan, 544 F.3d 762 (7th Cir. 2008). A prisoner brought a habeas petition challenging his disciplinary conviction. The district court dismissed the petition and an appeal was taken. The appeals court affirmed, finding that the disciplinary finding that the prisoner was guilty of being a habitual conduct rule violator did not raise a constitutional violation addressable under habeas corpus. The court noted that the prisoner's prior disciplinary finding of guilt on a conduct report charging him with insolence played a role in the prison's designation of him as a habitual offender, and thus may indirectly have led to his loss of good-time credits. (Indiana)

- U.S. Appeals Court
EVIDENCE
- Adkins v. Wolever*, 554 F.3d 650 (6th Cir. 2009). A prisoner brought a § 1983 action against a prison guard, alleging that the guard assaulted him in violation of his Eighth Amendment rights. The district court denied the prisoner's motion for a jury instruction related to the alleged spoliation of film and photographic evidence of the alleged assault. The prisoner had asked the court to sanction the defendant for failing to produce stationary video footage that shows the prisoner being escorted back to his cell, a post-incident narrative video that contains interviews of staff members about the incident, and original photographs of the prisoner's injuries. The prisoner appealed. The appeals court remanded the action to determine whether the guard should be subject to any form of spoliation sanctions. (Ionia Maximum Security Facility, Michigan)
- U.S. Appeals Court
DUE PROCESS
RETALIATION
SEGREGATION
- 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
RETALIATION
- Burke v. North Dakota Dept. of Correction and Rehabilitation*, 620 F.Supp.2d 1035 (D.N.D. 2009). A state inmate filed a § 1983 action against prison officials alleging statutory and constitutional violations, including interference with his free exercise of religion, lack of adequate medical care, retaliation for exercising his constitutional rights, failure to protect, refusal to accommodate his disability, and cruel and unusual punishment. The district court granted summary judgment for the defendants. The court held that: (1) failure to provide Hindu worship services on Thursdays did not violate the inmate's equal protection rights; (2) the decision to reduce Hindu worship services at the facility did not violate the Free Exercise Clause; (3) restriction of the Hindu inmate's use of camphor, kumkum, incense, and a butter lamp during worship services did not violate the Free Exercise Clause; and (4) failure to find a qualified Hindu representative to assist the inmate in the study of his religion did not violate the Free Exercise Clause. The court held that an officer's filing of a disciplinary charge against the inmate, after the inmate filed a grievance with the warden alleging that the officer had failed to break up an altercation involving the inmate, was not retaliatory in violation of the inmate's First Amendment rights, where prison officials investigated the altercation, the inmate admitted that he provoked the altercation, and the inmate was found guilty of a disciplinary violation. (North Dakota State Penitentiary)
- U.S. District Court
PUNISHMENT
RULES
WORK
- 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 found that the prisoner did not have any liberty or property interest in employment while in prison, and thus the prisoner did not suffer any violation of his due process right related to his termination from his prison job as a result of discipline arising from the search of his cell, precluding liability on the part of facility owner and its employees under § 1983. According to the court, the prison facility's imposition of a 30-day suspension of the prisoner's telephone privileges related to a disciplinary action arising from the search of his cell and the confiscation of another inmates' legal papers, did not constitute an unreasonable limitation on the prisoner's First Amendment rights. The court noted that prisoners have a First Amendment right to telephone access, subject to reasonable limitations. (Taft Correctional Institution, Wackenhut Corrections Corporation, California)
- U.S. District Court
CONDITIONS OF
SEGREGATION
EVIDENCE
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 there was no evidence that a misbehavior report that a corrections officer filed against the prisoner was a false report intended to cover up the use of excessive force, as required for the prisoner's false misbehavior report claim against the officer. The court also found no causal connection between the state prisoner's grievance and the issuance of the misbehavior report, as required for the state prisoner's retaliation claim against a corrections officer.
- The court held that the denial of access to toilet paper and soap during the prisoner's confinement in a special housing unit did not constitute an unconstitutional condition of confinement, as required for the prisoner's inadequate prison conditions claim against corrections officers under the Eighth Amendment. The court noted that the deprivation of toilet paper and soap was not continuous, there was no evidence that the prisoner was deprived of any other toiletry items, and there was no evidence that the prisoner requested toilet paper during medical visits.
- 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. Appeals Court
CONDITIONS OF
SEGREGATION
DUE PROCESS
HEARING

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. Appeals Court
FOOD

Foster v. Runnels, 554 F.3d 807 (9th Cir. 2009). A female inmate brought a civil rights action against a prison official, alleging the official deprived her of 16 meals over a 23-day period in violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The district court entered summary judgment for the official, and the inmate appealed. The appeals court reversed and remanded. The court held that the official's conduct in allegedly depriving the inmate of 16 meals over a 23-day period for the inmate's failure to remove a paper from the rear window of her cell was a sufficiently serious deprivation of a life necessity, as required to establish violation of the Eighth Amendment's prohibition against cruel and unusual punishment. The court noted that the official's argument-- that the alleged deprivation was due to the inmate's personal choice not to comply with a prison policy-- failed to demonstrate how the inmate's failure to remove a paper from a window jeopardized her safety or security during in-cell feeding. The court found that the official was not entitled to qualified immunity because the inmate's right to adequate meals was clearly established, and the case law alerting prison officials to their obligations to provide inmates with adequate meals should have put the official on notice of her Eighth Amendment rights. (High Desert State Prison, California)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS

Greene v. Furman, 610 F.Supp.2d 234 (W.D.N.Y. 2009). A state inmate brought a pro se § 1983 action against corrections officials, alleging various constitutional violations arising out of disciplinary proceedings instituted after he allegedly spit at another inmate. The district court dismissed the case. The court held that an allegation that a corrections officer issued a false misbehavior report against the inmate failed to state a claim for a due process violation. The court noted that the issuance of false misbehavior reports against an inmate by corrections officers is insufficient on its own to establish a denial of due process. According to the court, the allegation that the inmate, who was being escorted to a mental health appointment when he became involved in an altercation with another inmate and was not allowed to continue to his appointment, failed to state a claim for an Eighth Amendment violation. The court found that any delay in the inmate's mental health treatment did not cause him actual harm or put his health at risk, and there was no evidence that the delay resulted from any sadistic or otherwise impermissible motive. 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 Corr'l Facility, New York)

U.S. Supreme Court
ACCESS TO COURT
DUE PROCESS

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. District Court
VISITS

Johnson v. Boyd, 676 F.Supp.2d 800 (E.D. Ark. 2009). A state prisoner filed a civil rights action against a detention center and its personnel alleging several violations. The defendants moved for summary judgment and the district court granted the motion in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether detention center personnel failed to protect the prisoner from an attack by another prisoner. According to the court, the prisoner's First Amendment freedom of association and speech rights had not been violated by denial of his visitation, phone, and mailing privileges for two days as the direct result of the prisoner committing a disciplinary infraction while he was in protective custody. (Crittenden County Detention Center, Arkansas)

U.S. District Court
DUE PROCESS
EVIDENCE

Loret v. Selsky, 595 F.Supp.2d 231 (W.D.N.Y. 2009). An inmate brought a § 1983 action against state correctional officials and employees, alleging procedural due process violations in connection with a prison disciplinary action. The district court granted summary judgment to the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether there were legitimate security

reasons for the correctional facility officials' denial of the inmate's request for a recording or transcript of the telephone conversation between him and his son. The conversation formed part of the basis for disciplinary charges against the inmate for conspiracy to smuggle contraband into the facility and for telephone abuse. A package addressed to the inmate had been opened by corrections employees, and was found to contain a quantity of marijuana and some small bottles of liquor. The package was later identified as having been sent to the plaintiff by his adult son. The court held that the superintendent of the correctional facility was not liable in his individual capacity to the inmate under § 1983 for any due process violations in connection with disciplinary proceedings against the inmate, absent a showing that the superintendent was personally involved in the alleged constitutional deprivation. (Wyoming Correctional Facility, New York)

U.S. Appeals Court
DUE PROCESS
EQUAL PROTECTION
LIBERTY INTEREST
SEGREGATION

Marion v. Columbia Correction Inst., 559 F.3d 693 (7th Cir. 2009). A prisoner brought a § 1983 action against prison officials alleging he was denied equal protection and due process at a disciplinary hearing which resulted in 240 days of disciplinary segregation. The district court dismissed the complaint and the prisoner appealed. The appeals court reversed and remanded. The court held that the issue of whether 240 days in disciplinary segregation was the type of atypical, significant hardship that would implicate a protected liberty interest could not be decided at the pleading stage. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
DUE PROCESS
GOOD-TIME
WITNESS

Morgan v. Quarterman, 570 F.3d 663 (5th Cir. 2009). A petitioner filed a habeas petition challenging a disciplinary proceeding that resulted in loss of good time credit due to his use of indecent or vulgar language in a note he mailed to opposing counsel in an unrelated habeas proceeding. The district court granted summary judgment for the government and the petitioner appealed. The appeals court affirmed. The appeals court held that the state prison had a legitimate penological interest in rehabilitation that justified its revocation of 15 days of the prisoner's good time credit as punishment for violating a disciplinary rule prohibiting the use of indecent or vulgar language when the prisoner mailed to a state's attorney in habeas proceeding a note written on toilet paper stating, "Please use this to wipe your ass, that argument was a bunch of shit." According to the court, the punishment was not an impermissible infringement of the prisoner's First Amendment right to free speech. The court noted that the prisoner's note demonstrated a completely unjustified disrespect for authority, expressed in the most unacceptably vulgar form, which would be offensive in mainstream society, and the prison's disciplinary action served to correct behavior that would seriously prejudice the prisoner when he returns to the civil world. The court found that requirements of due process were satisfied at the prisoner's hearing where the prisoner: received notice of the disciplinary hearing and his attendant rights; he was provided assistance of a counsel substitute; the prisoner called the charging officer as a witness and that officer testified via speaker phone; the hearing officer's denial of the prisoner's request that the prison's mail room supervisor and Assistant Attorney General be called as witnesses was warranted since the prisoner's note was not intercepted; and that the charging officer's report and testimony, the prisoner's admission that the note was in his handwriting, and prison mail logs all supported the finding against him. (Texas Department of Criminal Justice, Correctional Institutions Division, Stevenson Unit)

U.S. District Court
ASSISTANCE
COUNSEL
DUE PROCESS
PUNISHMENT

Muhmmaud v. Murphy, 632 F.Supp.2d 171 (D.Conn. 2009). A state prison inmate brought an action against state correctional facility employees, asserting federal claims pursuant to the Fourth, Fifth, Eighth, Thirteenth, and Fourteenth Amendments as well as several state constitutional claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. According to the court, allegations that the pretrial detainee's transfer to a chronic discipline program amounted to punishment adequately alleged that state correctional facility employees violated the detainee's federal and state substantive due process rights, where the transfer was allegedly unrelated to the detainee's behavior during pretrial detention but was instead punishment for incidents occurring prior to the detainee's discharge from custody at the conclusion of the sentence for previous conviction. The court held that the pretrial detainee stated a claim that state prison employees violated his procedural due process rights by alleging that he was denied effective assistance of counsel at a disciplinary hearing. (Connecticut Department of Correction, Northern Correctional Institution)

U.S. District Court
DUE PROCESS
EVIDENCE
GOOD TIME
WITNESS

Ramsey v. Goord, 661 F.Supp.2d 370 (W.D.N.Y. 2009). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging due process violations in connection with a disciplinary hearing and violations of his constitutional rights relative to his temporary removal from a kosher cold alternative diet (CAD) program. The employees 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 a state prison correction officers' captain, correction officer, and/or prison counselor were personally involved in the temporary removal of the Jewish prisoner from a kosher cold alternative diet (CAD) program. The court found that the prisoner, who was found guilty by a prison disciplinary hearing officer of violating New York Department of Correctional Services (DOCS) rules, had a protected liberty interest in his earned good time credit toward release, and thus an officer was required to provide the prisoner with procedural due process before imposing on the prisoner a penalty that included loss of six months of good time credit. The court held that a hearing officer's failure to call unidentified inmates to testify at the prisoner's disciplinary hearing did not violate the prisoner's procedural due process rights, where the prisoner did not make any request during a hearing for such witnesses to testify, and the prisoner failed to explain the relevancy of unidentified inmates' testimony.

The court held that DOCS employees were not entitled to qualified immunity from the prisoner's § 1983 procedural due process claim that he was denied the opportunity to call witnesses and to hear and respond to evidence presented against him at a disciplinary hearing. The court noted that at the time of the hearing, it was clearly established that the prisoner was entitled to advance written notice of disciplinary charges, an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense, and a written statement by a fact finder of evidence relied on and reasons for the disciplinary action. (Southport Correctional Facility, New York)

U.S. District Court RETALIATION	<i>Sital v. Burgio</i> , 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. District Court GRIEVANCE RETALIATION	<i>Skinner v. Holman</i> , 672 F.Supp.2d 657 (D.Del. 2009). A prisoner brought a § 1983 action against prison employees, alleging he was retaliated against for having filed a prison grievance. The defendants moved to dismiss the claims as frivolous and the district court denied the motion. The court held that the inmate's allegations that he was denied transfer to a minimum security prison, was prevented from working, and was kept in disciplinary confinement for several months as a result of a grievance he had filed were sufficient to state a claim of retaliation for the exercise of his First Amendment rights by prison employees. (James T. Correctional Center, Delaware)
U.S. District Court DUE PROCESS HEARING SEGREGATION WITNESS	<i>Willey v. Kirkpatrick</i> , 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 VISITS	<i>Dunn v. Castro</i> , 621 F.3d 1196 (9 th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the First, Eighth and Fourteenth Amendments. The district court denied the officials' motion to dismiss. The officials appealed. The appeals court reversed and remanded. The court held that the right of the prisoner to receive visits from his children was not clearly established and the officials were entitled to qualified immunity. The court noted that the restriction was temporary and the prisoner had violated prison rules by participating in a sexually-oriented telephone call involving a minor. (Corcoran State Prison, California)
U.S. District Court FOOD	<i>Greene v. Esgrow</i> , 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. District Court PUNISHMENT	<i>Hopkins v. Grondolsky</i> , 759 F.Supp.2d 97 (D.Mass. 2010). A prisoner filed a petition for a writ of habeas corpus. The Federal Bureau of Prisons (BOP) filed a motion to dismiss. The district court dismissed the case, finding that the loss of 90 days of commissary privileges as a disciplinary action was not a loss of any protected liberty interest, and allegations were insufficient to plead prison regulations unreasonably burdened the prisoner's constitutional rights. (Federal Bureau of Prisons, Sex Offender Management Program, FMC Devens, Massachusetts)
U.S. District Court WITNESS DUE PROCESS RESTRAINTS	<i>Randolph v. Simmons</i> , 757 F.Supp.2d 233 (W.D.N.Y. 2010). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights in connection with a disciplinary hearing. The district court granted the officials' motion for summary judgment. The court held that a correction officer's misbehavior report adequately set forth the factual basis for the disciplinary charge, the hearing officer's denial of the inmate's request to call a correction officer did not violate due process, and the inmate's due process rights were not violated by his placement in mechanical restraints during the hearing. (Gowanda Correctional Facility, New York)
U.S. District Court DUE PROCESS EVIDENCE	<i>Santibanez v. Havlin</i> , 750 F.Supp.2d 1121 (E.D.Cal. 2010). A petitioner filed for a writ of habeas corpus, challenging a state prison disciplinary conviction resulting from a rules violation report. The district court granted the petition. The district court held that a state appellate court's determination that sufficient evidence existed to convict the petitioner challenging state prison disciplinary conviction of possession of escape paraphernalia was

contrary to clearly established federal law; rather than applying the “some evidence” standard, as required to comport with due process, the trial court had unreasonably based its denial of habeas relief on general observations regarding courts' customary deference to the judgment of prison officials. (California State Prison–Solano)

U.S. District Court
EVIDENCE
DUE PROCESS
SEGREGATION

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
EVIDENCE
LENGTH OF
SEGREGATION
LIBERTY INTEREST
RETALIATION
SEGREGATION-MAIL

Webster v. Fischer, 694 F.Supp.2d 163 (N.D.N.Y. 2010). An inmate brought a civil rights action against prison officials, alleging discrimination, retaliation, harassment, and violations of his constitutional rights, federal statutes, state law, and regulations. The inmate sought declaratory judgment and injunctive relief, as well as money damages in the amount of \$500,000. The district court granted the defendants’ motion for summary judgment. The court held that misbehavior reports and disciplinary actions were not in retaliation for the inmate’s participation in an inmate liaison committee, where the inmate was found guilty of the charges in the misbehavior reports based on admissions at a disciplinary hearing. The court found that the inmate did not suffer from the infliction of any physical injury or pain as a result of a corrections officers’ allegedly harassing conduct. According to the court, the inmate did not suffer deprivation of a constitutionally protected liberty interest by confinement in a special housing unit for 90 days. The court held that the inmate’s sleep apnea was not sufficiently serious to warrant Eighth Amendment protection, where the inmate admitted that he did not use a breathing machine for a 90-day period that he was confined to a special housing unit, and there was no evidence that the inmate experienced any physical deterioration or other consequences as a result of the lapse in treatment. The court held that there was no evidence that the inmate was placed on a mail watch or that any of his mail was illegally opened or intentionally misdirected. (Cayuga Correctional Facility, New York State Department of Correctional Services)

U.S. Appeals Court
RETALIATION

Williams v. Jackson, 600 F.3d 1007 (8th Cir. 2010). A former inmate brought Eighth Amendment claims against a prison maintenance supervisor and three correction officers alleging that they willfully and maliciously exposed him to ultraviolet radiation resulting in physical injury. The district court denied the defendants’ motion for summary judgment, and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that correction officers were not entitled to qualified immunity from the inmate’s claims alleging that officers used excessive force and acted with deliberate indifference, in violation of the Eighth Amendment, in removing the shield used to protect cell occupants from exposure to ultraviolet radiation from a germicidal ultraviolet radiation lamp used for the treatment of tuberculosis. The court found that officers acted in retaliation for a comment made by another inmate during a “shake down” of the cell, and that officers ignored demands to replace the shield or deactivate the light, since reasonable officers were on sufficient notice that they may not purposefully expose inmates to potentially harmful radiation in the complete absence of a penological purpose. (East Arkansas Regional Unit, Arkansas Department of Corrections)

U.S. District Court
CLOTHING
EQUAL PROTECTION
FOOD

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

2011

U.S. District Court
EVIDENCE

Cobbs v. Superintendent, 821 F.Supp.2d 1071 (N.D.Ind. 2011). After he was found guilty in a prison disciplinary hearing of possessing an unauthorized electronic device, a prisoner petitioned for federal habeas relief. The district court granted the petition. The court held that the prison disciplinary hearing body’s (DHB) failure to review a potentially exculpatory segment of videotape evidence to determine if other inmates planted the cell phone, warranted the grant of a petition for federal habeas relief. (New Castle Correctional Facility, Indiana)

U.S. District Court
WITNESS
DUE PROCESS
EVIDENCE
PUNITIVE
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 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
ADA- Americans with
Disabilities Act
DISCIPLINARY
PROCEDURES

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. (New York City Dept. of Correction- Rikers Island, State of New York Dept. of Correctional Services Elmira Correctional Facility, New York)

U.S. Appeals Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
LIBERTY INTEREST

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, holding that the disciplinary measures to which 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, Ill.)

U.S. Appeals Court
RETALIATION
DISCIPLINARY
PROCEDURES

Moton v. Cowart, 631 F.3d 1337 (11th Cir. 2011). A state inmate brought a § 1983 retaliation action against a correctional captain, alleging that the captain violated his First Amendment rights when she disciplined him for filing an inmate grievance and for speaking to her in a manner she found disrespectful. The district court granted summary judgment in favor of the captain. The inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by fact issues as to: (1) the causal relationship between the inmate's grievance and the discipline that the correctional captain imposed against the inmate; and, (2) the causal relationship between the inmate's statements and discipline. The court found that the inmate's statement to the correctional captain about contacting his attorney in response to the correctional captain's failure to respond to the inmate's grievances was not inconsistent with his prisoner status or with legitimate penological objectives, and thus it was entitled to free speech protection. (Florida Department of Corrections)

U.S. Appeals Court
DUE PROCESS
EVIDENCE
FINE
WITNESS

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
DISCIPLINARY
PROCEDURES
DUE PROCESS
RETALIATION

O'Bryant v. Finch, 637 F.3d 1207 (11th Cir. 2011). A state prisoner brought a § 1983 suit alleging that prison officials violated his due process rights during his prison disciplinary proceedings and retaliated against him for filing grievances. The district court granted the officials motion for summary judgment and the prisoner appealed. The appeals court affirmed. The court held that the prisoner received procedural due process in hearings in which he was found guilty of disciplinary violations, where the prisoner received a detailed written notice of the charges against him, and of his rights during the investigations and hearings, he had the opportunity to present evidence and witnesses, he received written statements of the findings against him and the evidence relied upon by the disciplinary panels, and he had rights to request staff assistance and to appeal the panels' decisions to the warden. The court found no evidence that prison officials were subjectively motivated to discipline the state prisoner because of his earlier grievances, in violation of the First Amendment. Rather, according to the court, officials would have taken the same disciplinary actions in the absence of the prisoner's protected activity, and even if some impermissible reason had entered into an official's decision-making process, the causal connection was severed, since the prisoner would have been disciplined anyway, as hearing panels concluded he committed charged conduct. (Holmes Correctional Institution, Florida)

U.S. Appeals Court
LIBERTY INTEREST
PUNISHMENT

Persechini v. Callaway, 651 F.3d 802 (8th Cir. 2011). A state prisoner filed a § 1983 action against prison officials for alleged deprivation of his due process rights by terminating him from long-term substance abuse treatment program that resulted in the mandatory execution of his 15-year sentence and his ineligibility for probation. The district court dismissed the claim for failure to state a claim. The prisoner appealed. The appeals court affirmed. The court held that the prisoner lacked a liberty interest in: (1) the outcome of a disciplinary proceeding; (2) the outcome of the action taken by a program review committee; and (3) the outcome of termination from a treatment program. The court noted that the sanction imposed by the disciplinary committee for stealing a towel, confinement to his room for ten days and referral to program review committee, was neither atypical nor significant hardships in relation to ordinary incidents of prison life. (Ozark Correctional Center, Missouri)

U.S. District Court
EQUAL PROTECTION
RELIGIOUS SERVICES
RETALIATION
WORK

Roberts v. Klein, 770 F.Supp.2d 1102 (D.Nev. 2011). A Black state prisoner filed a civil rights action against prison administrators and employees alleging violation of his First Amendment right to free exercise of religion, his statutory rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Equal Protection Clause. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner stated a claim that prison officials and employees violated his religious rights under the First Amendment, RLUIPA, and the Equal Protection Clause on allegations that they implemented and enforced a policy that denied him kosher meals because his Jewish faith had not been verified by an outside entity, and the prison did not show that there was valid rational connection between the prison regulation and a legitimate government interest. The court found that the prisoner stated a claim that a prison employee retaliated against him for exercising his First Amendment right to free exercise of religion, on allegations that he sincerely believed that he must attend religious services and his work assignment was terminated soon after he attended Jewish services, after which the employee stated that "You're no damn Jew," "You're right I'm firing you," and "Around here I'm your God." According to the court, the prisoner also stated a claim that a prison employee retaliated against him for exercising his First Amendment right to free exercise of religion and deprived him of Equal Protection under Fourteenth Amendment, on allegations that he was written up on disciplinary charges for attending Jewish services, as a protected activity, while white inmates of the Jewish faith were not written up on disciplinary charges for attending services, and that he was placed on disciplinary charges two days later because he attended the services. The court held that the prison employees were not entitled to qualified immunity. (Southern Desert Correctional Center, Nevada)

U.S. District Court
DUE PROCESS
LIBERTY INTEREST
WITNESS

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. Appeals Court
REVIEW OF
SEGREGATION

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
CONDITIONS
SEGREGATION

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
LIBERTY INTEREST
RETALIATION
DUE PROCESS

Covarrubias v. Wallace, 907 F.Supp.2d 808 (E.D.Tex. 2012). A state prisoner brought a pro se § 1983 action against prison guards and officials complaining of alleged violations of his constitutional rights, in connection with an alleged assault by guards and a subsequent disciplinary hearing. The district court held that: (1) picket officers could not be held liable under a supervisory liability theory for failing to intervene when the prisoner was subjected to pepper spray, where even if they had authority to intervene, they did not have a realistic opportunity to intervene;

(2) the punishments imposed on the prisoner for assaulting a guard did not violate any due process liberty interest; (3) denial of the prisoner's grievance did not violate any due process liberty interest; and (4) the prisoner failed to state an Eighth Amendment claim for disregarding an excessive risk to his health or safety. But the court found that the prisoner's allegations, that corrections officers used excessive force against him in retaliation for requesting a supervisor and for attempts to informally resolve a complaint, stated § 1983 claims against the officers. The prisoner alleged that as he was being restrained, one officer fired a two- to three-second burst of pepper spray into his right eye, and the officers subsequently tackled him, using their elbows, knees, arms, and hands on his back, legs, arms, and face as they piled on him and pressed his face into the concrete. (Texas Department of Criminal Justice, Correctional Institutions Division, Beto Unit)

U.S. District Court
DUE PROCESS
HEARING
ISOLATION
NOTICE

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
RECLASSIFICATION
RECORDS
RETALIATION
TRANSFER

King v. Zamirara, 680 F.3d 686 (6th Cir. 2012). A state prisoner sued several corrections employees under § 1983 for violating his First Amendment rights when they transferred him to an increased security level facility in retaliation for his participation in a state-court class action against corrections officials regarding inmate property, as well as for his assistance to other inmates in filing grievances. The district court entered 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 a causal connection existed between the adverse action in increasing the prisoner's security level and the prisoner's purportedly disruptive First Amendment protected conduct, and that certain officials failed to show by a preponderance of the evidence that they would have taken the same action absent the protected conduct. The court found that a deputy warden could be held liable on the prisoner's § 1983 First Amendment retaliation claim, where her memo complaining about the prisoner's behavior was the actual and proximate cause of the increase in the prisoner's security level, and where she helped execute the order increasing the prisoner's security level with the knowledge that it was intended to retaliate for the prisoner's protected conduct. According to the court, the transfer coordinator was not liable on the prisoner's § 1983 First Amendment retaliation claim based on his editing of the prisoner's security screen to replace the initial notation with the notation that the prisoner was manipulative, where there was no showing that he knew or should have known that his superior's order to do so was meant to retaliate for the prisoner's protected conduct a month earlier. The court held that an assistant deputy warden was not liable on the prisoner's § 1983 First Amendment retaliation claim based on his signing a backdated security screen approving the prisoner's transfer to the increased security facility, where he neither knew or should have known that he was implementing punishment for the prisoner's exercise of his protected rights. (Michigan Department of Corrections, Brooks Correctional Facility, Chippewa Correctional Facility)

U.S. District Court
GOOD-TIME
HEARING
SOLITARY
CONFINEMENT
WITNESS

Mitts v. Zickefoose, 869 F.Supp.2d 568 (D.N.J. 2012). A federal prisoner filed a petition for a writ of habeas corpus, challenging his loss of good conduct time (GCT) credit following a finding that he was guilty of committing the disciplinary infraction of fighting. The prisoner's claims were screened and his claims relating to his transfer and loss of privileges were dismissed. The district court held that the prisoner was denied a meaningful opportunity to call witnesses at his disciplinary hearing, warranting federal habeas relief directing the Bureau of Prisons (BOP) to provide him with a curative hearing, where the prisoner, having been placed in solitary confinement, without assistance of a staff representative, was unable to either detect the identities of inmate witnesses or to determine whether another inmate involved in the altercation confessed to him being merely the victim of that inmate's violence. (FCI Fort Dix and United States Penitentiary Hazelton, West Virginia)

U.S. District Court
EVIDENCE
WITNESS
DUE PROCESS
PRISONER ON
PRISONER ASSAULT
APPEAL

Molano v. Bezio, 42 F.Supp.3d 465 (W.D.N.Y. 2012). An inmate brought a § 1983 action against prison officials, alleging violations of his Fourteenth Amendment rights. Cross motions for summary judgment were filed. The district court granted the inmate's motion and denied the defendants' motion. The court held that: (1) there was no evidence that a surveillance videotape of a holding pen existed or that its content would change the outcome of the inmate's disciplinary proceedings; (2) finding the inmate guilty of an attack on another inmate was not supported by some reliable evidence; (3) the prison official who affirmed the hearing officer's finding was personally involved and the official was fully aware of the deficiencies in the underlying hearing at the time he denied the appeal and later denied reconsideration; and (4) the inmate's right not to be punished based on an alleged victim's hearsay accusation without an indication in the record as to why the victim should be credited, was clearly established. The court noted that the inmate admitted he was present in the prison yard at the time of the attack on another inmate, the attacked inmate identified the charged inmate in a photo lineup but then refused to testify, no one who testified at the hearing had personally observed the attack, the sergeant who signed the photo array admitted he was not present when the charged inmate was identified, and the sergeant's report was made up entirely of hearsay and double hearsay statements from other officers, none of whom endorsed the report or submitted their own firsthand reports. (New York State Department of Correctional Services, Five Points Correctional Facility)

U.S. District Court
DISCIPLINARY
PROCEDURES
DUE PROCESS
INVESTIGATION
SOLITARY
CONFINEMENT

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-Butner, North Carolina, and Rivers Corr'l. Institution, operated by GEO Group, Inc)

U.S. District Court
ACCESS TO COURTS
RETALIATION

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. District Court
EVIDENCE
FOOD
RETALIATION

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
PUNISHMENT

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, converse with other residents, work on homework or legal issues, and play cards. (Missouri Sexual Offender Treatment Center)

U.S. Appeals Court
PUNITIVE
SEGREGATION
READING MATERIAL
DUE PROCESS

Toston v. Thurmer, 689 F.3d 828 (7th Cir. 2012). A state prison inmate brought a pro se civil rights complaint under § 1983 against prison officials, alleging that his rights of free speech and due process were violated when a disciplinary proceeding found him guilty of possession of gang literature and sentenced him to 90 days confinement in segregation. The inmate's due process claim was dismissed, and the district court granted summary judgment for officials on the free speech claim. The inmate appealed. The appeals court affirmed in part and vacated in part. The appeals court held that the limitation of the state prison inmate's right of free speech, as a result of a disciplinary proceeding that found him guilty of possession of gang literature, was adequately justified by prison officials' legitimate concern that the inmate copied from a prison library book a ten-point program by the founder of a hate group's predecessor in order to show it to others that the inmate hoped to enlist in a prison gang, with the program to serve as the gang's charter. The court noted that a prison librarian's decision that on the whole a book is not gang literature does not preclude disciplinary proceedings against an inmate who copies incendiary passages from it. The inmate had purchased, with prison permission, "To Die for the People: The Writings of Huey P. Newton" the founder of the Black Panthers, and he had checked out two books from the prison library about the Black Panthers. The court vacated the district court decision regarding the alleged due process violation. The inmate alleged that his

due process rights were violated because he had no notice that copying passages from prison library books or a book he had been allowed to purchase could subject him to a sentence of 90 days' confinement in segregation for possessing gang literature. The appeal court ordered the district court to determine whether a 90-day sentence to segregation was, or was not, a deprivation of liberty. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
NOTICE
PROCEDURES
RETALIATION
DUE PROCESS

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. The court held that the inmate stated a First Amendment retaliation claim under § 1983 against a male prison correction officer by alleging that the officer had written a false inmate misbehavior report (IMR) against her three days after she had filed a grievance against him for performing a degrading sexual act in front of her, and that because of the false report she had been forced to spend three months in the prison's special housing unit (SHU). (Bedford Hills Correctional Facility, New York)

2013

U.S. Appeals Court
DUE PROCESS
GOOD-TIME
LIBERTY INTEREST

Denny v. Schultz, 708 F.3d 140 (3rd Cir. 2013). A federal prisoner petitioned for a writ of habeas corpus challenging findings made by Disciplinary Hearing Officer (DHO) that he had possessed weapons in violation of a prison regulation and sanctioned him with forfeiture of 40 days of good time credit and the imposition of 60 days in disciplinary segregation. The district court dismissed the petition and the prisoner appealed. The appeals court affirmed. The appeals court held that the DHO did not violate the federal prisoner's due process rights when it found that the prisoner had committed the prohibited act of "Possession of a Weapon," on the basis that two homemade shanks had been found in a cell that he shared with another prisoner. The court noted that, although those weapons may have belonged to his cellmate, all prisoners had an affirmative responsibility to keep their "area" free from contraband and the collective responsibility theory applied. According to the court, a prisoner serving a term of imprisonment of more than one year had a liberty interest in good time credit that was protected by Fourteenth Amendment, since he had statutory right to receive credit toward his sentence for good conduct. But the court noted that on a claim of loss of good time credits through a disciplinary action, though the "some evidence" standard is a standard of appellate review and not a "burden of proof," a reviewing court need only find that a decision by a Disciplinary Hearing Officer (DHO) had "some basis in fact" in order to affirm the decision as comporting with the Due Process Clause. (Federal Correctional Institution, Fairton, New Jersey)

U.S. Appeals Court
APPEAL
GOOD-TIME

Grandberry v. Kever, 735 F.3d 616 (7th Cir. 2013). A state prisoner petitioned for federal habeas relief, challenging a prison disciplinary action resulting in the loss of his "good-time" credit that would extend his period of incarceration by 30 days. The district court denied the petition and the prisoner appealed. The appeals court held that the prisoner was not required to seek a certificate of appealability (COA) before appealing the denial of his petition for habeas relief. The court allowed the appeal to go forward. (Plainfield Correctional Facility, Indiana)

U.S. Appeals Court
SEGREGATION

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. Appeals Court
DUE PROCESS
EXPUNGEMENT
RECORDS

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
DUE PROCESS
HEARING
PROCEDURES

Peterson v. Johnson, 714 F.3d 905 (6th Cir. 2013). A Michigan prisoner brought a § 1983 action against prison officers, seeking financial damages for an officer's alleged use of excessive force. The district court granted the officers' motions for summary judgment. The prisoner appealed. The appeals court affirmed. The court held that the prisoner had an adequate opportunity to litigate, at a major misconduct hearing, the factual dispute as to whether he grabbed a prison officer by the right hand and pulled the officer's hand into the cell as the door was closing. The court noted that not only did the prisoner have, and exercise, a plethora of statutory protections, but any objections he had to the major misconduct hearing itself could have been appealed within the department and then, if necessary, to state court. (Ionia Correctional Facility, Michigan)

U.S. District Court
EVIDENCE
NOTICE
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. (SCI Graterford, SCI Greene, Pennsylvania)

U.S. Appeals Court
LENGTH OF
SEGREGATION
DUE PROCESS

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
DUE PROCESS
FOOD
RETALIATION

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

2014

U.S. District Court
SEGREGATION
ADA- Americans with
Disabilities Act

Ballard v. Johns, 17 F.Supp.3d 511 (E.D.N.C. 2014). A civil detainee being considered for certification as a sexually dangerous person brought an action against federal employees, in their official capacities and in their individual capacities under *Bivens*, challenging various conditions of his detention, including claims concerning due process violations and inability to attend religious services. The employees moved to dismiss or for summary judgment and the detainee moved to overrule objections to requests for document production. The district court granted the employees' motion and denied the detainee's motion. The court held that: (1) the detainee did not show that federal employees, by following Federal Bureau of Prisons (BOP) regulations and policies, violated his constitutional rights; (2) the detainee was properly subjected to restrictions and disciplinary consequences of the BOP commitment and treatment program; (3) denial of the detainee's request to attend or receive religious services while in disciplinary segregation did not unduly burden his free exercise of religion; and (4) the employees did not violate detainee's right to be free from unreasonable searches and seizures by searching his cell and seizing his property. (Federal Correctional Institution at Butner, North Carolina)

U.S. District Court
PLACEMENT IN
SEGREGATION
WITNESS
PRETRIAL DETAINEE

Best v. New York City Dept. of Correction, 14 F.Supp.3d 341 (S.D.N.Y. 2014). A pretrial detainee filed a § 1983 action alleging that state prison officials denied him due process at an infraction hearing, improperly placed him in segregated housing, and failed to protect him while being transported to court. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the issues of whether the detainee's placement in segregated housing following the infraction hearing was administrative or punitive in nature, and whether he was provided the opportunity to call a witnesses at a hearing involved fact issues that could not be resolved on a motion to dismiss the detainee's claim that prison officials' denied him procedural due process at the hearing. (Metropolitan Detention Center, Brooklyn, New York)

U.S. District Court
PROPERTY INTEREST
ASSISTANCE
EVIDENCE
WITNESS
GOOD TIME
HEARING
PUNITIVE
SEGREGATION

Brooks v. Prack, 77 F.Supp.3d 301 (W.D.N.Y. 2014). A state inmate brought a § 1983 action against prison officials, alleging due process violations in connection with the rehearing of a misbehavior report. The officials moved to dismiss for failure to state a claim, or in the alternative, for summary judgment. The district court denied the motion. The court held that summary judgment would be premature and that the penalty imposed on the inmate implicated a property interest protected by due process. The court also found that the inmate stated procedural due process claims that he was denied adequate assistance and that he was denied the opportunity to present evidence. A penalty of 20 months in a special housing unit (SHU), loss of privileges, and loss of 20 months of recommended good time had been imposed on the inmate who was found guilty in a disciplinary rehearing of assault on staff, refusal of a direct order, and insolent language. The inmate alleged that he met with and was interviewed by his inmate assistant, that he gave the assistant a list of materials he wanted in preparation for his disciplinary rehearing, but the assistant did not give him certain requested materials, including a list of inmates in a certain block, a list of porters, photographs, and command logs. The inmate also alleged that the assistant did not give him answers to questions he proposed to ask potential witnesses and failed to provide him with witness refusal forms. According to the court, the inmate's allegations that the hearing officer recommended a disciplinary hearing outside of the inmate's presence and stated on the record that he provided the inmate with certain materials, which the inmate claimed he never received, stated a § 1983 procedural due process claim related to the inmate's exclusion from a portion of the rehearing. (Southport Correctional Facility, New York)

U.S. Appeals Court
SEGREGATION
REVIEW OF
SEGREGATION
DUE PROCESS
CONDITIONS OF
SEGREGATION

Brown v. Oregon Dept. of Corrections, 751 F.3d 983 (9th Cir. 2014). A state prison inmate brought a pro se § 1983 action against the Oregon Department of Corrections alleging that prison officials violated his due process rights by housing him in an intensive management unit without periodic, meaningful review of his status. The defendants moved for summary judgment. The district court granted the motion. The inmate appealed. The appeals court affirmed. The court held that the inmate's 27-month confinement in an intensive management unit deprived him of a due-process protected liberty interest, but the inmate's due-process protected liberty interest in periodic, meaningful review of his status was not clearly established, and thus prison officials were entitled to qualified immunity. The court noted that the inmate experienced an atypical and significant hardship in that he was subjected to solitary confinement for over 23 hours each day, with almost no interpersonal contact, and he was denied most privileges afforded to inmates in the general population. (Snake River Correctional Institution, Oregon)

U.S. Appeals Court
CONDITIONS OF
SEGREGATION
PRETRIAL DETAINEE

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 officials appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that: (1) reasonable prison officials would not have known that the pretrial detainee's substantive due process rights and procedural due process rights would have been violated by holding him in disciplinary segregated confinement throughout the period of pretrial detention as punishment for conduct that had occurred while he was imprisoned during a prior criminal sentence; (2) the detainee's two prior convictions were not sufficient to establish reasonable expectation after he had been released from custody that he would re-offend; (3) the detainee was not the "prevailing party" for the purpose of attorneys' fees and costs with regard to a declaratory judgment entered on his behalf as it related to his rights as a detainee; (4) 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 Corr'l Insti. at Cedar Junction)

U.S. Appeals Court
GOOD TIME
EVIDENCE

Grandberry v. Smith, 754 F.3d 425 (7th Cir. 2014). A state prisoner filed a petition for a writ of habeas corpus, challenging the revocation of 30 days of his good-time credits upon his conviction of an administrative offense of possession of an electronic device. The district court denied the petition and the prisoner appealed. The appeals court reversed and remanded with instructions. The court held that the revocation of the prisoner's good-time credits was not supported by some evidence, where there was no evidence that the prisoner used a computer to download forms and documents that he was not told to by a prison employee. (Putnamville Corr. Facility, Indiana)

U.S. Appeals Court
WITNESS

Holland v. Goord, 758 F.3d 215 (2nd Cir. 2014). A state inmate filed a § 1983 action alleging that prison officials burdened his religious exercise, in violation of Free Exercise Clause and Religious Land Use and Institutionalized Persons Act (RLUIPA), when they ordered him to provide a urine sample while he fasted in observance of Ramadan, breached his due process rights, and retaliated against him. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court found that a hearing officer at a prison disciplinary hearing did not violate the inmate's right to due process when he refused to permit the inmate to call his imam as a witness to establish that, as a practicing Muslim,

the inmate was unable to drink water at the time he was ordered to provide a urine sample, where the inmate had already testified to that fact and the hearing officer did not discredit his statement. (Wende Corr. Facility, N.Y.)

U.S. Appeals Court
INFORMANTS

Reeves v. King, 774 F.3d 430 (8th Cir. 2014). An inmate brought a § 1983 action against a correctional officer, alleging violations of the Eighth Amendment in being labeled a snitch. The district court denied the officer's motion for summary judgment based on qualified immunity. The officer appealed. The appeals court affirmed. The court held that the inmate's right not to be labeled a snitch regarding conduct that was beneficial to other inmates was clearly established at the time correctional officer allegedly called the inmate a snitch in front of other inmates, for purposes of determining whether the officer was entitled to qualified immunity in the inmate's § 1983 action alleging violations of the Eighth Amendment. (Ouachita River Unit, Arkansas)

U.S. District Court
RETALIATION

Richard v. Fischer, 38 F.Supp.3d 340 (W.D.N.Y. 2014). A multiracial Muslim inmate brought a civil rights action alleging that prison officials and employees discriminated against him on the basis of race and religion and retaliated against him for filing grievances. The officials moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that New York State Department of Correctional Services (DOCS) employees were acting within scope of their employment, specifically, the duty of assigning work positions to inmates, when they denied the multiracial Muslim inmate employment outside of his cellblock. The court found that the inmate's allegations that no other inmate in the prison was "isolated by programming" or restricted to an employment position in his or her cellblock, that the inmate was isolated to programs in his cellblock, presumably because of his race and religion, and that prison employees tasked with assigning work refused to place the inmate on a waiting list for his desired program, when waiting lists were open to "all others," sufficiently stated that the inmate was treated differently than similarly-situated individuals, supporting the inmate's § 1983 claim that employees denied him equal protection by restricting him to employment opportunities in his cellblock. According to the court, a prison employee's filing of allegedly false disciplinary reports against the inmate was causally related to the inmate's filing of grievances challenging the prison's employment policy one to three months prior, thus supporting the inmate's § 1983 First Amendment retaliation claim against the employee. (Five Points Correctional Facility, New York)

U.S. District Court
WITNESS
IMPARTIALITY
RETALIATION

Sloane v. Borawski, 64 F.Supp.3d 473 (W.D.N.Y. 2014). A state inmate brought a § 1983 action alleging that correction officers used excessive force against him, denied him due process in connection with a disciplinary hearing, and denied him adequate medical treatment after the alleged excessive use of force incident. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) exclusion of proposed witnesses at a prison disciplinary hearing did not violate the inmate's procedural due process rights where the testimony of three witnesses, who were prison employees, would have been irrelevant to the issues presented in the hearing, and another potential witness, a fellow inmate, refused to testify on the grounds that he did not know anything; (2) the hearing officer was not so partial as to violate the inmate's procedural due process rights; (3) the inmate failed to establish that retaliation was the motivating factor behind filing of an allegedly false misbehavior report; (4) summary judgment was precluded by a fact issue on the Eighth Amendment excessive force claim as to whether correction officers' use of force against the inmate was unrelated to any effort to maintain order or discipline; but, (5) the inmate's injuries, including a two-and-a-half-inch laceration to the top of his head, a laceration to his left eyebrow, and a chin abrasion, did not rise to the level of a serious medical condition warranting Eighth Amendment protection. (Attica Correctional Facility, New York)

U.S. District Court
EVIDENCE
DUE PROCESS

Whitley v. Miller, 57 F.Supp.3d 152 (N.D.N.Y. 2014). An inmate in a state prison brought a § 1983 action against prison officials, claiming they violated his Fourteenth Amendment right to due process with respect to discipline he received due to his alleged involvement in a fight. Both parties moved for summary judgment. The district court held that the disciplinary decision violated the inmate's due process rights and the hearing officer was not entitled to qualified immunity. According to the court, evidence was insufficient to satisfy the "some reliable evidence" standard necessary to support the disciplinary hearing officer's decision finding the prisoner guilty of charges related to a fight in a prison yard, and thus the decision violated the prisoner's due process rights. The court noted that the officer was unable to identify the prisoner in a videotape of the fight, and testimony of a corrections sergeant that it was only in his estimation that the prisoner was involved in the fight due to the prisoner's presence in the area where the fight took place, did not sufficiently corroborate the written misbehavior report that the sergeant had authored. The court held that the hearing officer violated the prisoner's clearly established due process rights, and therefore was not entitled to qualified immunity in the prisoner's § 1983 action, where the officer relied solely on testimony that was little more than speculation as the basis for subjecting the prisoner to discipline for his alleged involvement in a fight. (Clinton Correctional Facility, New York)

U.S. Appeals Court
SOLITARY CONFINEMENT
REVIEW OF
SEGREGATION
LIBERTY INTEREST

Wilkerson v. Goodwin, 774 F.3d 845 (5th Cir. 2014). A state prisoner brought a § 1983 action against prison officials, asserting procedural due process violations relating to his lengthy and continuing incarceration in solitary confinement. The district court denied the officials' motion for summary judgment based on qualified immunity. The officials appealed. The appeals court affirmed. The court held that the prisoner's solitary confinement constituted an atypical and significant hardship in relation to the ordinary incidents of prison life, such that a due-process liberty interest in avoiding the deprivation arose. The court noted that the prisoner's incarceration in solitary confinement was approaching an extraordinary 39 years, including 35 years before his transfer to the current prison, the prisoner's solitary confinement was effectively indefinite, and restrictions during solitary confinement were severe, including cell isolation for 23 hours per day, limited physical exercise, and limited human contact. (David Wade Correctional Facility, Louisiana)

U.S. District Court
RETALIATION

Williams v. Klien, 20 F.Supp.3d 1171 (D.Colo. .2014). A federal inmate brought a Bivens action against various prison officials, alleging a due process violation and First Amendment retaliation, as related to his complaints about sleep deprivation and penalties that followed his complaints. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated a Bivens claim against a prison official, alleging First Amendment retaliation and seeking declaratory and injunctive relief, and the prison official was not entitled to qualified immunity on the inmate's First Amendment retaliation claim seeking declaratory and injunctive relief. The inmate alleged that the prison official expressed his disdain for the inmate and his various grievances, and then arranged for continued adverse actions to be taken against the inmate, as required for the inmate to state a Bivens claim for declaratory or injunctive relief. The inmate alleged that during a one year period, he was awakened each night while he was sleeping, as officers were conducting count they would beat on his cell door, and that these actions were taken to deprive him of adequate sleep. According to the court, the inmate's allegations indicated that he sought to exercise his First Amendment rights by filing grievances, that the official was aware of the inmate's attempt to file grievances, that, based on that awareness, the official took action to impose adverse consequence on the inmate, and that the consequence would deter a person of ordinary firmness from engaging in a constitutionally-protected activity. (Federal Correctional Institution, Florence, Colorado)

2015

U.S. Appeals Court
EVIDENCE
GOOD TIME
PUNISHMENT

Austin v. Pazera, 779 F.3d 437 (7th Cir. 2015). A state prisoner petitioned for federal habeas relief, alleging that a disciplinary proceeding had denied him due process of law, primarily by convicting him on the basis of insufficient evidence. The district court denied the petition and the prisoner appealed. The appeals court reversed, finding that evidence did not support the disciplinary determination that the inmate was guilty of attempted trafficking in tobacco. According to the court, the prison disciplinary hearing officer's finding that the inmate was guilty was not supported by even "some evidence," and, thus, the subsequent revocation of his good time credit and other imposed disciplinary sanctions violated due process. The inmate's punishment consisted of losing 60 days of good-time credit which increased his period of imprisonment by 60 days, being demoted from "credit class 1" to "credit class 2." Inmates in the first class earn one day of good time credit for each day of imprisonment, while inmates in the second class earn one day of credit for every two days of imprisonment. The inmate was also given 20 hours of extra work duty, and denied access to the prison commissary for 25 days. (Indiana Department of Corrections)

U.S. District Court
PRETRIAL DETAINEES
PUNISHMENT

Bloom v. Toliver, 133 F.Supp.3d 1314 (N.D. Okla. 2015). A pretrial detainee brought a § 1983 action against a jail's administrator, shift supervisors, detention officer, and county sheriff, alleging violations of his Fourth, Eighth, and Fourteenth Amendment rights in connection with an attack on him by another inmate while being transferred from a holding cell to a segregation cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail shift supervisor who made the decision to move the pretrial detainee from a holding cell to a segregation cell did so with a desire to punish the detainee, in violation of the Fourteenth Amendment's due process clause. The supervisor admitted that there were cells other than the one where the detainee was moved, and testified that his intent in moving the detainee "was to discipline [the detainee] Bloom," and that placement in any of the other cells "wouldn't have been disciplinary." The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the jail's detention officer violated the pretrial detainee's Fourteenth Amendment right to be protected from substantial risks of assault from other inmates by moving him from the holding cell to a segregation cell in which another inmate was being held.(Creek County Criminal Justice Center Oklahoma)

U.S. Appeals Court
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
SEGREGATION
RETALIATION

Fantone v. Latini, 780 F.3d 184 (3rd Cir. 2015). A state parole violator filed a § 1983 action alleging that prison officials caused him to be confined in a prison restrictive housing unit (RHU) in retaliation for exercising his constitutional rights, which, in turn, led the state parole board to rescind his parole. The district court dismissed the complaint and the violator appealed. The appeals court affirmed in part and reversed. The court held that the violator did not have a constitutionally protected liberty interest in being paroled before his actual release, and thus prison officials did not violate the violator's due process rights when they caused him to be confined in a prison restrictive housing unit (RHU), even though the violator was later cleared of misconduct. But the appeals court found that the violator's allegations that a prison officer retaliated against him because he refused to provide a

written confession to a disciplinary charge and because he filed a grievance against the officer for threatening him during his interrogation, were sufficient to state a plausible claim against the officer for retaliation for exercising his Fifth Amendment right against self-incrimination, even though the officer's threats all came before the violator filed his grievance, where the disciplinary charge alleged criminal conduct. (Pennsylvania Board of Probation and Parole, State Correctional Institution–Pittsburgh)

U.S. Appeals Court
GOOD TIME
NOTICE

Frank v. Schultz, 808 F.3d 762 (9th Cir. 2015). A federal inmate brought a Bivens action against prison officials, alleging that he was denied due process in connection with a prison disciplinary hearing. The district court granted the officials' motion for summary judgment and the inmate appealed. The appeals court affirmed, finding that the inmate's due process rights were not violated in connection with the disciplinary hearing. According to the court, any procedural error arising from the disciplinary hearing officer's modification of the charge against the inmate, without providing the inmate advance written notice of the modification, was corrected through the administrative appeal process, and the inmate ultimately did not lose any good time credits, and thus the inmate's due process rights were not violated in connection with the disciplinary hearing. (Victorville Med. II, California)

U.S. District Court
INVESTIGATION

Hudson v. MacEachern, 94 F.Supp.3d 59 (D. Mass. 2015). Two state prisoners brought a pro se action against multiple officials of the state department of corrections (DOC), asserting that they were targeted for retaliation for their filing of prison grievances, as well as for assisting other prisoners in filing grievances. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that alleged conduct by certain DOC officials in placing the prisoner in the special management unit, a segregated housing unit, and filing a disciplinary report against him, after becoming aware of, and because of, the prisoner's protected conduct of filing grievances against officials and assisting other inmates in filing grievances, was sufficient to support the prisoner's pro se First Amendment retaliation claim against the officials. According to the court, the prisoner's allegations that a prison disciplinary officer improperly rubberstamped the disciplinary report against the prisoner without adequate investigation, without more, did not state a claim for violation of a Massachusetts prison regulation requiring the disciplinary officer to review prison disciplinary reports or make further investigation the officer deemed necessary. (Massachusetts Correctional Institution at Shirley)

U.S. Appeals Court
SOLITARY
CONFINEMENT
REVIEW OF
SEGREGATION
CONDITIONS OF
SEGREGATION
EXERCISE

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. Appeals Court
SEGREGATION
RETALIATION

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. District Court
DISCIPLINARY
PROCEDURES

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. (Penn. State Correctional Institution (SCI) Graterford)

U.S. District Court
ASSISTANCE
DUE PROCESS

Moore v. Peters, 92 F.Supp.3d 109 (W.D.N.Y. 2015). A former parolee attending drug treatment program brought a § 1983 action against correction officers for violation of his due process rights and retaliation. The Parolee moved for partial summary judgment and the officers cross-moved for judgment on the pleadings. The district court granted the defendants' motion in part and denied in part, and denied the plaintiff's motion. The court held that the parolee assigned to a drug treatment program engaged in a protected activity, for purposes of a § 1983 First Amendment retaliation claim, when he filed a statement accusing a correction officer of assaulting another participant in the program. But the court held that the parolee did not have liberty interest protected by procedural due process in remaining at drug treatment facility, and thus he did not have right to procedural due process procedures in connection with his removal from facility. According to the court, the fact that parolee's removal

from the drug treatment program resulted in a 10-month prison assessment did not implicate his procedural due process rights in connection with his removal from program, where the parolee was called before the program's Evaluation Review Committee (ERC) for "poor program progress" and misbehavior, not for violation of his parole.

The court held that the inmate's allegations that the correction officer who presided over his disciplinary hearing denied his request for employee assistant, and that the inmate was detained in an isolation cell and transferred prior to the hearing, rendering him unable to conduct his own investigation of the disciplinary charges, stated a § 1983 procedural due process claim. (Willard Drug Treatment Campus, Five Points Correctional Facility, New York)

U.S. District Court
RETALIATION

Quiroz v. Horel, 85 F.Supp.3d 1115 (N.D.Cal. 2015). A state prisoner brought an action against prison officials, alleging that the officials retaliated against him for filing a prior federal civil rights complaint and for participating in another inmate's civil rights suit. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the official had a retaliatory motive for issuing a Rules Violation Report (RVR) against the prisoner; (2) whether officials had a retaliatory motive when they searched the prisoner's cell; and (3) whether prison officials had an agreement to retaliate against the prisoner by searching his cell, confiscating his paperwork, and issuing a Rules Violation Report (RVR) against him. (Pelican Bay State Prison, California)

U.S. District Court
RETALIATION

Quiroz v. Short, 85 F.Supp.3d 1092 (N.D.Cal. 2015). A state prisoner brought an action against prison officials, alleging that the officials retaliated against him for filing a prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the official acted with a retaliatory motive when he sent to the prisoner's fiancée a letter intended for another woman; (2) whether the prison official acted with a retaliatory motive when he issued a rules violation report (RVR) against the prisoner; and (3) whether officials had an agreement to retaliate against the prisoner by issuing the RVR against him. The court found that: (1) the official did not have a retaliatory motive in investigating an administrative grievance; (2) the prisoner's assertion that one of the official's duties was to monitor incoming and outgoing mail was insufficient to show that the official destroyed two specific pieces of the prisoner's mail; (3) the official was entitled to qualified immunity on the prisoner's right to intimate association claim; and (4) the official's act of sending a letter to the prisoner's fiancée that was intended for another woman did not prevent the prisoner from continuing to associate with his fiancée and did not prevent the prisoner from marrying his fiancée. (Pelican Bay State Prison, Secure Housing Unit, California)

U.S. Appeals Court
NOTICE
GOOD-TIME

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

U.S. Appeals Court
DUE PROCESS
NOTICE

Smith v. Fischer, 803 F.3d 124 (2d Cir. 2015). A state inmate filed a § 1983 action alleging that prison officials deprived him of his procedural due process rights by failing to notify him that an administrative disciplinary hearing would take place in his absence, and of the consequences of his failure to appear. The district court entered summary judgment in the officials' favor, and the inmate appealed. The appeals court dismissed the appeal, finding that the inmate's conduct constituted a knowing and voluntary waiver of his right to attend his disciplinary hearing. The court noted that the inmate had received notice that a hearing on his charges would be held, he met with an assistant, and requested another prisoner as a witness, he was conducted to a hearing room at the scheduled time, he then asked to leave room and refused to participate, and declined to call the witness or ask any questions when the hearing officer sent guards to his cell. According to the court, there was no evidence that the inmate was discouraged from attending or that any other factor beyond his control contributed to his decision to return to his cell before the hearing began. (Auburn Correctional Facility, New York)

U.S. Appeals Court
RULES
GRIEVANCE

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)

SECTION 12: EXERCISE AND RECREATION

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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.

1971

U.S. District Court
OUTDOOR EXERCISE Sinclair v. Henderson, 441 F.Supp. 1123 (E.D. La. 1971). Confinement for long periods of time without the opportunity for regular outdoor exercise violates the eighth amendment. (Louisiana State Penitentiary)

1972

U.S. District Court
OUTDOOR EXERCISE Baker v. Hamilton, 345 F.Supp. 345 (W.D. Ky. 1972). Absence of outdoor exercise, recreation, or rehabilitative efforts constitutes cruel and unusual punishment as to juveniles. (Jefferson County Jail, Kentucky)

U.S. District Court
RECREATION Taylor v. Sterrett, 344 F.Supp. 411 (N.D. Tex. 1972), reh'g denied, 420 U.S. 983 (1974). Court orders jail officials to provide inmates with a program of recreation. The absence of any programs for training and rehabilitation may have constitutional significance where in the absence of such a program, conditions and practices which exist actually militate against reform and rehabilitation. (Dallas County Jail, Texas)

1973

U.S. District Court
EXERCISE Goldsby v. Carnes, 365 F.Supp. 395 (W.D. Mo. 1973). Inmates in isolation shall be permitted to exercise outside their cells daily. (Jackson County Jail, Kansas City, Missouri)

U.S. District Court
RECREATION Hamilton v. Love, 358 F.Supp. 338 (E.D. Ark. 1973). Recreation is not required every day; all that is required is a reasonable program, conceived and implemented in good faith. (Palaski County Jail, Arkansas)

U.S. District Court
OUTDOOR EXERCISE Johnson v. Lark, 365 F.Supp. 289 (E.D. Mo. 1973). Absence of outdoor exercise contributes to a finding of cruel and unusual punishment. (St. Louis County Jail, Missouri)

1974

U.S. District Court
EXERCISE Rhem v. Malcolm, 371 F.Supp. 594 (S.D. N.Y. 1974). Daily exercise is essential to health. (Manhattan House of Detention, New York)

U.S. District Court
RECREATION Wilson v. Beame, 380 F.Supp. 1232 (E.D. N.Y. 1974). Inmates in administrative segregation are entitled to art programs offered to the general population. (House of Detention For Men, Brooklyn, New York)

1975

U.S. District Court
OUTDOOR
RECREATION Campbell v. McGruder, 416 F.Supp. 100 (D. D.C. 1975), aff'd, 580 F.2d 521 (D.C. 1978). Outdoor recreation is feasible for maximum security detainees. Jail must provide recreation for prisoners, including prisoners in maximum security. (D.C. Jail)

- U.S. District Court
MOVIES
SEGREGATION
EXERCISE
- Giampetruzzi v. Malcolm, 406 F.Supp. 836 (S.D. N.Y. 1975). Inmates in administrative segregation are entitled to be furnished with chess and checker material if the general population is so furnished. Fact that inmates in administrative segregation view movies on a small screen in the narrow corridor outside their cells, while general population views them on a large screen, does not constitute a difference of constitutional dimension. 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. District Court
OUTDOOR
RECREATION
- Rhem v. Malcolm, 396 F.Supp. 1195 (S.D. N.Y. 1975), aff'd, 527 F.2d 1041 (2nd Cir. 1975). City shall provide warm outer garments to indigent detainees to facilitate outdoor recreation in cold weather. (Manhattan House of Detention, New York)
- 1976
- U.S. District Court
RECREATION
- Barnes v. Government of the Virgin Islands, 415 F.Supp. 1218 (D. V.I. 1976). Inmates shall receive at least one hour of recreation five days a week. (Golden Grove Adult Correctional Facility, Virgin Islands)
- 1977
- U.S. District Court
EXERCISE
RECREATION
- Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. The total lack of recreation and exercise facilities and programs violates due process. Any group and individual counseling programs which may be established shall be staffed by properly trained professionals. Basic and remedial educational programs may be established in the new facility. Work release, vocational training release, and educational release programs may be established for the new facility. An appropriate crisis intervention program may be established in the new facility. Rehabilitation programs, counseling, work release, and vocational programs are not constitutionally required. (Platte County Jail, Missouri)
- U.S. District Court
EXERCISE
- Johnson v. O'Brien, 445 F.Supp. 122 (E.D. Mo. 1977). Jail prisoners are to have at least three one hour exercise periods each week. (St. Louis County Jail, Missouri)
- U.S. District Court
EXERCISE
- Vest v. Lubbock County, 444 F.Supp. 824 (N.D. Tex. 1977). Three hours per week of out of cell exercise are required. (Lubbock County Jail, Texas)
- 1978
- U.S. District Court
OUTDOOR
RECREATION
- Adams v. Mathis, 458 F.Supp. 302 (N.D. Ala. 1978), aff'd, 614 F.2d 42 (5th Cir., 1980). Lack of outdoor recreation is a denial of equal protection. (Houston County Jail, Alabama)
- U.S. District Court
EXERCISE
- O'Bryan v. Saginaw, 446 F.Supp. 436 (E.D. Mich. 1978). At least two hours of exercise shall be provided each week. (Saginaw County Jail, Michigan)
- 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. Appeals Court
OUTDOOR
EXERCISE
- Jones v. Diamond, 594 F.2d 997 (5th Cir. 1979), cert. denied, 102 S.Ct. 27 (1980). In this opinion, the U.S. Fifth Circuit Court of Appeals reviewed Mississippi District Court Judge William Cox's ruling on what the Fifth Circuit termed a "challenge to nearly every conceivable facet of the Jackson County Jail at Pascagoula, Mississippi." The court first noted that the conditions at the Jackson County Jail were not "uncivilized" or "barbaric and inhumane", as the court had found rulings on the conditions of other jails. A peculiar aspect of this case was that convicted felons were being held in the jail while the state penitentiary was being brought up to constitutional standards. Consequently, there were convicted felons, convicted misdemeanants and pretrial detainees in the jail.
- Accordingly, the court, in reviewing the conditions at the jail, applied different standards depending on whether the inmate was pretrial detainee or a convicted felon or misdemeanant. The court then reviewed the history of corrections in the State of Mississippi and specifically in Jackson County. It noted that Jackson County officials had spent a considerable amount of money and instituted several new programs in the last ten years. In addition, at the time of this opinion, the county was in the process of erecting a new jail. After noting these facts, the court made rulings in the following areas.

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

1980

U.S. Appeals Court
EXERCISE

Campbell v. Cauthron, 623 F.2d 503 (8th Cir. 1980). Each inmate confined in his cell more than sixteen hours per day is to have one hour of out-of-cell exercise. Walking the corridor does not constitute exercise. (Sebastian County Jail, Arkansas)

U.S. District Court
EXERCISE

Griffin v. Smith, 493 F.Supp. 129 (W.D. N.Y. 1980). Allegations of the proscription of radio earphones, limiting the commissary purchase to \$5.00, and the denial of access to state issue tobacco for inmates in the Special Housing Unit fail to state a claim upon which relief can be granted. Allegations of inadequate out-of-cell exercise for inmates in the Special Housing Unit state a claim upon which relief can be granted. (Attica Correctional Facility, New York)

U.S. District Court
EXERCISE

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

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

Failure of county jail authorities to provide each inmate one hour per day of exercise outside cells was a constitutionally intolerable condition. (Clay County Jail, Missouri)

1981

U.S. District Court
RECREATION
EXERCISE

Heitman v. Gabriel, 524 F.Supp. 622 (W.D. Mo. 1981). One hour of recreation is required per day. The United States District Court ordered that each inmate is to be allowed the opportunity for one hour of out-of-cell recreation and exercise daily. (Buchanan County Jail, Missouri)

U.S. District Court
RECREATION

Hendrix v. Faulkner, 525 F.Supp. 435 (N.D. Ind. 1981), cert. denied, 104 S.Ct. 3587 (1983), aff'd, 715 F.2d 269. The conditions of overcrowding at the Indiana State Prison constitute a violation of the eighth amendment in light of the physical plant and limits on staffing. Therefore, prison officials were required to take immediate action to ameliorate the conditions. Contributing to the limited time out of the cell is a sheer number of inmates. There was testimony that some inmates had not had outside recreation in five months. However, other conditions at the prison did not rise to the level of constitutional violations. (Indiana State Prison)

U.S. District Court
EXERCISE
OUTDOOR
EXERCISE

Parnell v. Waldrep, 511 F.Supp. 764 (W.D. N.C. 1981). All inmates are constitutionally entitled to have one hour of substantial out of cell exercise at least five days per week. The court suggests, but does not require, that the exercise be outdoors. (Gaston County Jail, North Carolina)

1982

U.S. District Court
EXERCISE

Grubbs v. Bradley, 552 F.Supp. 1052 (M.D. Tenn. 1982). Prisoners in the Tennessee correctional system brought an action against the state challenging the constitutionality of the conditions of confinement in several of Tennessee's adult penal institutions. The United States District Court held that certain conditions of confinement and practices amounted to cruel and unusual punishment, including the confinement of inmates in segregation status for more than one week without any opportunity for exercise at the prison for women. (Tennessee Correctional System)

U.S. District Court
EXERCISE

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

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

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

1983

State Appeals Court
RECREATION

Abdullah v. Smith, 465 N.Y.S.2d 81 (App. 1983). Moslem inmates may stay in cells during recreation period to pray. The court ordered prison authorities to stop punishing Moslem inmates for praying in the recreation yard or to allow them to return to their cells. The court stated that permitting prisoners access to their cells during recreation periods did not impede the maintenance of order or discipline nor did it unreasonably limit the superintendent's authority. (Attica Corr. Facility, New York)

State Appeals Court
EXERCISE
FEMALES

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. District Court
FACILITIES

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. District Court
EXERCISE

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

U.S. Appeals Court
EXERCISE

Union County Jail Inmates v. Di Buono, 713 F.2d 984 (1983), cert. denied, 104 S.Ct. 1600 (1983). Litigation challenging severe overcrowding at the Union County Jail in New Jersey resulted in a finding by a federal district court and its special master that the overcrowded conditions at the jail were unconstitutional. The most serious concern of the court was placement of inmates on mattresses on the floor of one man cells. Rejecting the state corrections commissioner's request to resolve the problem by double bunking, the

district judge ordered the convicted inmates removed from the jail and into the state prison system to which they had been sentenced (537 F.Supp. 1009). In reversing the district court's prohibition against double bunking, the Third Circuit Court of Appeals ruled that under the "totality of the circumstances," the double bunking proposal would satisfy the constitutional prohibitions against the punishment of pretrial detainees and against cruel and unusual punishment of sentenced prisoners.

According to the appeals court, double bunking would resolve the "totality" issue by providing adequate space for sleeping and would allow for reclaiming large recreation areas, permitting each inmate one hour of exercise each day in the larger space. The circuit claimed that this recreation period would offset the "cramped and overcrowded conditions" of the remaining fifteen waking hours, during which square footage per inmate varies from thirty-one to thirty-three and one half square feet. (Union County Jail, New Jersey)

U.S. Appeals Court
EXERCISE
OUTDOOR
EXERCISE

Wilkerson v. Maggio, 703 F.2d 909 (5th Cir. 1983). Inmate's conduct justifies keeping him in maximum security. It was not unreasonable or arbitrary to consider an inmate a security risk since his past prison conduct had warranted the Reclassification Board's decision to keep him in maximum security, the Fifth Circuit Court of Appeals has ruled. The inmate's record showed that the inmate had participated in riots, that he attacked and assaulted correctional officers, and that he was convicted for the murder of another inmate.

Although the inmate was not permitted any outdoor exercise for five years, he was allowed daily, one hour exercise outside his cell in any manner he desired. As such, no violation of the eighth amendment's prohibition against cruel and unusual punishment had occurred. (State Penitentiary, Angola, Louisiana)

1984

State Appeals Court
EXERCISE
RECREATION

Powloski v. Wulich, 479 N.Y.S.2d 89 (App. 1984). Detainees entitled to active recreation. A New York State Court of Appeals has found that a county violated laws by not providing a recreation area large enough for inmates to engage in active exercise. Recreation in the jail was limited to the corridors, which restricted exercise to walking. The court ordered interim measures to ensure active exercise pending completion of plans which were already underway to purchase recreational equipment and to use the basement as an exercise area. The decision considered a New York Commission of Corrections minimum standard which required at least one hour of exercise per day for each prisoner housed in a local facility. (Genesee County Jail, New York)

1985

U.S. District Court
RECREATION

Miles v. Bell, 621 F.Supp. 51 (D.C.Conn. 1985). The focus of this complaint was overcrowding, particularly in the housing unit, which once consisted of open dormitories. Pretrial detainees brought a class action suit primarily alleging that the overcrowded dorms increased the spread of disease among them and were psychologically harmful because of the stress, lack of control over their areas and lack of privacy. With regards to recreational opportunities, the inmates had enough forms of exercise and equipment available regularly. (Federal Correctional Institution at Danbury, Connecticut)

U.S. Appeals Court
OUTDOOR
RECREATION

Walker v. Mintzes, 771 F.2d 920 (6th Cir. 1985). In reconsidering security measures following a riot, prison officials made some changes in policy at several prisons within the state, including placing limitations on the inmates' privileges. It was alleged that the changes would become the "new normal" at the prison, even after the emergency lifted. The issue was whether the specific limitations violated the inmates' rights, not the fact that changes were made. Reductions in yard time were challenged, resulting in the court finding that the yard time should differ among the prisons, depending on the status of prisoners, and the different circumstances at the various institutions. Readers should refer to the case for specific amounts of yard time ordered for the various classifications of inmates. For the most part, general population inmates were to receive three showers per week while those in administrative segregation were to receive one per week. Group religious meetings and access to courts were also discussed. (Marquette Branch Prison, State Prison of Southern Michigan at Jackson, Michigan Reformatory at Ionia)

1986

U.S. District Court
EXERCISE

Dominguez v. Figel, 626 F.Supp. 368 (N.D. Ind. 1986). Federal court finds inmate filed frivolous and inaccurate suit, imposing a \$1,500 penalty and requiring the inmate to pay \$2,500 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, because 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. District Court
RECREATION

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

U.S. Appeals Court
EXERCISE

Leonard v. Norris, 797 F.2d 683 (8th Cir. 1986). It did not violate the cruel and unusual punishment clause of the eighth amendment to give inmates in punitive isolation no out-of-cell exercise for the first fifteen days of punitive confinement. The exercise policy, although severe, and perhaps even harsh, was not cruel or barbaric. It had the purpose of discouraging disruptive behavior that made an inmate unfit to circulate among the prison's general population. (Cummins Unit, Department of Corrections, Arkansas)

U.S. District Court
EXERCISE

McClung v. Camp County, Tex., 627 F.Supp. 528 (E.D. Tex. 1986). District court rules against all prisoner claims in conditions of confinement suit against jail. An inmate who had been incarcerated in a county jail brought action against the county and various county officials alleging that conditions in jail violated his constitutional rights. The federal district court held that evidence supported a finding that conditions placed on the inmate's physical exercise at the jail did not constitute a violation of inmate's constitutional rights. Evidence that county jail cells had enough room for inmates to exercise, and that the inmate's health had not suffered during short periods he was confined in the jail supported the court's finding that conditions did not constitute a violation of inmate's constitutional rights. (Camp County Jail, Texas)

U.S. Appeals Court
OUTDOOR
EXERCISE

Shelby County Jail Inmates v. Westlake, 798 F.2d 1085 (7th Cir. 1986). Conditions of the Shelby County Jail in Indiana did not violate the constitutional rights of inmates, says a U.S. Appeals Court. Inmates at the Shelby County Jail (SCJ) filed a suit alleging that the totality of conditions and practices at SCJ violated their constitutional rights. The inmates complained that they did not have any meaningful opportunity for outdoor exercise or activities. The county testified the inmates were allowed to play cards and board games, read books, ride exercise bikes, and were provided with American Medical Association booklets on indoor exercise. The appeals court determined that the county presented sufficient evidence to support a finding that none of the conditions amounted to constitutional violations. (Shelby County Jail, Indiana)

1987

U.S. Appeals Court
SEGREGATION

Bailey v. Shillinger, 828 F.2d 651 (10th Cir. 1987). After his voluntary transfer to a prison in another state, a Wyoming state prisoner who was serving a sentence for first degree murder murdered another prisoner and was returned to the Wyoming State Prison. The warden assigned him to a maximum security unit without a formal hearing. The prisoner filed a civil rights lawsuit against the warden, alleging his due process rights had been violated. He also charged that he was subjected to cruel and unusual punishment by being deprived of exercise and fresh air. The appeals court concluded that, because of the danger the inmate presented to other inmates and staff, the court concluded the warden was correct in assigning the inmate to maximum security. As to the cruel and unusual treatment charge, the court concluded that the one hour per day of exercise and fresh air was "restrictive" but did not violate the Eighth Amendment. (Wyoming State Prison)

U.S. District Court
EXERCISE

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 "out of cell time" granted federal prisoners for exercise and recreation did not violate the eighth amendment where the inmates in disciplinary segregation and protective custody were allowed five hours exercise per week outside their cells, and the prisoners in control unit were permitted seven hours exercise per week, and general population inmates received eleven hours of exercise per week. (Marion Penitentiary, Illinois)

U.S. District Court
EXERCISE

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. District Court
RECREATION

Manley v. Bronson, 657 F.Supp. 832 (D.Conn. 1987). The court ruled that being confined to a cell for 23 hours a day, receiving only one hour of recreation a day, did not constitute cruel and unusual punishment in violation of the Eighth Amendment. (Connecticut Correctional Institution at Somer)

1988

U.S. District Court
EXERCISE

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

incarceration is brief." However, on the issue of showers, the court noted that limiting the number of showers to one a week did not have a serious effect on the mental or physical well-being of the inmates and that "the deprivation merely of cultural amenities is not cruel and unusual punishment." The appeals court agreed, refusing to uphold an order for three showers per week. (Stateville Correctional Center)

U.S. District Court
EXERCISE
OUTDOOR EXERCISE/
RECREATION
SEGREGATION

Harris v. Fleming, 839 F.2d 1232 (7th Cir. 1988), affirmed, 993 F.2d 1549. An inmate filed a federal civil rights lawsuit against three prison officials, claiming he had been subjected to cruel and unusual punishment seeking \$320,000 in compensatory and punitive damages. The inmate stated that the prison failed to supply him with toilet paper for five days, or with soap, toothpaste or a toothbrush for ten days and he was kept in a "filthy" roach infested cell. He also complained that during 28 days in a segregation unit he was refused permission to exercise. Since the inmate suffered no physical harm, but merely some unpleasantness, the federal appeals court found that the defendants' temporary neglect of the prisoner was not intentional and that it did not reach unconstitutional proportions. While the court found that the circumstances of the case demonstrated some neglect and indifference on the prison's part, it concluded that the conditions were temporary and affected only one inmate. Although the inmate was deprived of "yard or recreation time," he could have "improvised temporarily with jogging in place, aerobics, or pushups." (Menard Correctional Center, Illinois)

State Appeals Court
EXERCISE
OUTDOOR
EXERCISE
OUTDOOR
RECREATION

N.Y. State Com'n of Correction v. Ruffo, 530 N.Y.S.2d 469 (Sup. 1988). The New York State Commission of Correction went to court seeking an order compelling a county and its sheriff to build an outdoor recreation area for inmates of the county jail and to transport inmates to the county's other jail facility for daily recreation while the new outdoor recreation area is being built. New York regulations, the Commission argued, provide that inmates be allowed to use recreation areas for a minimum of one hour a day and further requires that county jails provide an outdoor play area of a minimum of 1500 square feet to enable prisoners to engage in basketball, jogging, handball, weightlifting, calisthenics and other active recreation. The court found that the Commission had no authority to compel the county to construct a new facility. Further, the sheriff was not authorized by law to build a new jail or to raise taxes to fund a major renovation of the old one. The court did, however, grant the Commission an order directing the sheriff to transport prisoners to the county's other jail each day and allow each inmate one hour of outdoor recreation, not including travel time. (Broome County Jail, Binghamton, New York)

1989

U.S. District Court
SEGREGATION

Brooks v. Kleiman, 743 F.Supp. 350 (E.D. Pa. 1989). A prisoner brought a civil rights suit arising out of his incarceration in a restricted housing unit reserved for prisoners with disciplinary violations. The U.S. District Court found that the prisoner, who was incarcerated in a restrictive housing unit due to disciplinary violations, failed to show that his constitutional rights were violated by visitation restrictions, and exercise restrictions. As the inmates have demonstrated an inability to comply with prison regulations, they receive visitors in a restricted area where they cannot touch the visitors due to a plexiglas partition between the prisoners and the visitors. The prisoners may have their right to two hours of exercise per day¹ limited for proper purposes. It is impossible for all prisoners to receive two hours or more of exercise each day due to the constraints of the institution and of the ability of the prison personnel to handle the number of prisoners. It was also found that the additional period in the restricted housing unit was imposed for additional disciplinary violations. (Graterford Prison, Pennsylvania)

U.S. District Court
EXERCISE
OUTDOOR EXERCISE

Carver v. Knox County, Tenn., 753 F.Supp. 1370 (E.D. Tenn. 1989). A class action suit was brought on behalf of county jail inmates and pretrial detainees seeking declaratory and injunctive relief concerning conditions of confinement. The district court found that the failure to provide any meaningful exercise violated both the Eighth and Fourteenth Amendments. Inmates at the jail were not afforded any exercise programs or equipment, and had no access to fresh air and sunshine. Most of the inmates spent seven hours per day in their cells with access to a dayroom for the remaining 17 hours. The dayrooms were not equipped with recreational equipment, nor did the defendants otherwise encourage exercise. All too often the floors of the dayroom were used to house inmates because of overcrowded conditions, thus the inmates had no opportunity to perform sit-ups and push-ups. Although the court found that the provision of some exercise is constitutionally required, outdoor exercise is only required if an inmate spends more than a year in the jail. If this happens, defendants need to make arrangements not only for exercise but also for regular outdoor exercise. (Knox County Jail, Knoxville, Tennessee)

U.S. District Court
FACILITIES
RECREATION

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 federal court had authority to impose sanctions for violations of the agreement, embodied in the consent judgment, between inmates in the county prison and the county providing for maximum levels of occupancy of the prison and one hour of recreational opportunities per day per inmate as part of the court's general power to interpret and enforce contracts. A prior contempt finding against the prison for violating the maximum inmate population cap established by an agreement between inmates and the prison which was embodied in the consent judgment did not nullify a continued noncompliance with the order by the county. (Essex County Jail, New Jersey)

U.S. District Court
EXERCISE
FACILITIES

Gilland v. Owens, 718 F.Supp. 665 (W.D. Tenn. 1989). Convicted inmates and pretrial detainees brought a Section 1983 action challenging conditions at a county jail. The U.S. District Court found that the inmates and detainees failed to establish that incidents of delayed medical attention occurred with sufficient frequency to violate the eighth amendment and due process rights to medical care. The court found that the lack of exercise opportunities at the overcrowded county jail deprived the inmates and detainees of eighth amendment and due process rights, even though the sheriff intended to utilize gymnasium areas more fully in the future. 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
RECREATION

Hendrix v. Evans, 715 F.Supp. 897 (N.D.Ind. 1989). State prison inmates filed a pro se complaint alleging constitutional violations in connection with their conditions of confinement. On cross motions for summary judgment, the district court found that the first amendment rights of an inmate were not violated when prison officials refused to support and fund his lobbying efforts, prohibited him from publishing leaflets to distribute to the general public and prohibited him from attending lifers' inmate organization meetings. Due process rights were not violated when a prison official refused to permit him to participate in an educational release program at a local university; and state prison inmates had no property right under Indiana law to the interest earned on their personal funds deposited in the inmate trust fund.

The state prison officials did not violate the equal protection rights of an inmate housed in a dormitory located outside prison walls by using the inmates' recreation fund to supply free recreational supplies to inmates housed inside the prison walls while requiring prisoners housed outside the wall to purchase their own such supplies. Whatever interest the prisoners housed outside the walls had in free recreational supplies was far outweighed by the prison's interest in determining how to best expend the recreation fund on behalf of the majority of prisoners. (Indiana State Prison, Michigan City)

1990

U.S. District Court
EXERCISE

Buffington v. O'Leary, 748 F.Supp. 633 (N.D.Ill. 1990). A prisoner sued a prison official under Section 1983, alleging Eighth and Fourteenth Amendment deprivation. The U.S. District Court found that the prisoner who had been given seven hours per week exercise time outside of his cell and had not alleged physical injury from lack of physical movement did not state a cause of action against the prison official for infliction of cruel and unusual punishment. (Stateville Correctional Center, Illinois)

U.S. District Court
EXERCISE
OUTDOOR EXERCISE

LeMaire v. Maass, 745 F.Supp. 623 (D. Or. 1990). An inmate brought a civil rights action, alleging unconstitutional conditions of his imprisonment in a disciplinary segregation unit. The U.S. District Court found that the exercise conditions in the prison disciplinary unit constituted cruel and unusual punishment because the inmate was denied outdoor exercise for nearly five years and it was not possible for him to get sufficient exercise in his cell to prevent physical and mental deterioration. (Oregon State Penitentiary)

U.S. District Court
EXERCISE
SEGREGATION

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)

1991

U.S. District Court
EXERCISE

Benitez v. Gonda, 778 F.Supp. 200 (S.D.N.Y. 1991). In his pro se civil rights action against a licensed practical nurse at a state correctional facility, an inmate moved for preliminary injunction and writ of mandamus commanding his return from a "maxi-maxi" facility to which he had been transferred. The U.S. District Court found that the inmate's claims were insufficiently specific to support a grant of relief sought. Although the inmate claims that the regimen at the facility he was currently incarcerated in did not permit him to exercise during one-hour per day recreation period in the manner prescribed by a psychologist, he did not show why he could not perform corrective exercises during the remaining 23 hours, and the court found that the inmate was transferred as a result of his misbehavior and it was shown that the present facility had a fine medical staff and that there was no medical reason to transfer the inmate. (New York State Southport Correctional Facility)

U.S. District Court
RECREATION
EXERCISE

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
OUTDOOR EXERCISE
RECREATION

Johnson v. Williams, 768 F.Supp. 1161 (E.D. Va. 1991). An inmate brought a civil rights action against prison officials, claiming his rights were violated during a prison lockdown. On the officials' motion for summary judgment, the district court found that the limitations placed on the inmate's recreation and outdoor exercise during the lockdown imposed following a prison riot did not violate the inmate's Eighth Amendment rights. The prison officials had a legitimate penological interest in keeping the prisoners in their cells and limiting the amount of time outside cells for recreation and exercise. (Powhatan Correctional Center, Virginia)

1992

U.S. Appeals Court
EXERCISE

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

U.S. Appeals Court
EXERCISE

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. (Moberly Training Center for Men, Missouri)

1993

U.S. District Court
OUTDOOR
RECREATION

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
RECREATION

Childress v. Delo, 820 F.Supp. 458 (E.D. Mo. 1993). An inmate brought an action against prison officials, alleging violations of Section 1983 concerning restrictions imposed following an altercation that occurred when correctional officers instructed several inmates to remove gang colors displayed in a dining room. On the defendants' motion for summary judgment, the district court found the temporary deprivation of the inmate's recreational privileges following the altercation did not violate the inmate's constitutional rights. (Potosi Correctional Center, Missouri)

U.S. District Court
EXERCISE

Hershberger v. Scaletta, 861 F.Supp. 1470 (N.D. Iowa 1993). Inmates sued prison officials, alleging that prison rules requiring inmates to keep moving while exercising and permitting officials to rescind exercise privileges without due process in response to misbehavior in the exercise area were unconstitutional. The district court found that the prison's exercise pen rules did not violate due process because those regulations were enacted for the valid penological purpose of preventing assaults in the exercise pens and were reasonably related to that purpose. (Iowa Men's Reformatory, Anamosa, Iowa)

U.S. Appeals Court
TELEVISION

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. Appeals Court
HOBBIES

Smith v. Sumner, 994 F.2d 1401 (9th Cir. 1993). A state prison inmate brought a Section 1983 action against prison officials, alleging violations of his constitutional rights resulting from unreasonable restrictions on visitation, denial of his request for a privately retained attorney in a prison disciplinary action, denial of medical treatment, and denial of hobby craft privileges. The U.S. District Court entered judgment for prison officials on all issues, and the inmate appealed. The appeals court, affirming the decision, found that inmates in the Nevada state prison were entitled to hire attorneys to represent them in disciplinary proceedings. The finding that prison officials had not violated the inmate's constitutional rights by unreasonably restricting visitation, denying medical treatment, and denying hobby craft privileges in retaliation for the inmate's refusal to plead guilty to a charged disciplinary infraction was supported by evidence. The inmate or his visitors caused the delay in visitations by failing to fill out proper forms, failing to fill out forms correctly, or failing to abide by prison regulations. Hobby craft privileges were rarely granted to those in the inmate's unit because the fire marshal or health inspector would not allow it. The inmate failed to offer evidence of retaliatory conduct with respect to the alleged denial of medical treatment. (Nevada State Prison)

1994

U.S. Appeals Court
OUTDOOR EXERCISE

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
OUTDOOR EXERCISE

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' failure to provide the inmate with outdoor recreation when the officials had knowledge of the prison's goal to provide five hours of exercise per week, precluded summary judgment for the prison officials on their claim of qualified immunity, even though the officials claimed that logistical problems made it difficult to provide adequate exercise. The inmate met both the objective and subjective elements of his Eighth Amendment claim as he alleged deprivation of a basic human need, and proved that for six weeks he was permitted out of his cell only weekly for exercise. (Halawa High Security Facility, Hawaii)

U.S. District Court
EXERCISE
RECREATION
TELEVISION

Hopkins v. Campbell, 870 F.Supp. 316 (D.Kan. 1994). An inmate of a county jail brought a civil rights action complaining of conditions of confinement. The district court found that jail inmates were provided with adequate recreation and exercise areas and opportunities where there was a dayroom which inmates were free to use for meals and limited recreation, including television, radios, and limited forms of exercise. (Leavenworth County Jail, Leavenworth, Kansas)

U.S. Appeals Court
EXERCISE

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 received only 30 minutes of out-of-cell exercise during a three-month period in which he was confined in the county jail was sufficient to state a cruel and unusual punishment civil rights claim against jail officials. (Custer County Jail, Oklahoma)

U.S. District Court
OUTDOOR EXERCISE

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
EXERCISE

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 relatively short periods of sports restrictions on the inmate over the course of a couple of months did not constitute cruel and unusual punishment where the inmate remained free to exercise in his cell, and was not restricted in his duties as a porter, so that he had reasonable alternatives to maintain his health and rehabilitate his leg. (Joliet Correctional Center, Illinois)

U.S. District Court
EXERCISE

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 jail afforded the detainee an adequate opportunity to exercise, though he was initially housed in a cell that measured ten feet by ten feet. He had free access to a large dayroom in which he could have improvised an exercise regimen. The detainee was not constitutionally entitled to weight-training machines, basketball equipment, or treadmills. (Adams County Jail, Illinois)

U.S. District Court
RECREATION
SEGREGATION
TELEVISION

Taifa v. Bayh, 846 F.Supp. 723 (N.D.Ind. 1994). Prisoners brought a class action suit challenging conditions of confinement at a prison operated by the Indiana Department of Corrections. The district court approved a settlement agreement involving assignment and transfer of prisoners, along with improvement of various prison conditions at the Maximum Control Complex (MCC). The state agreed only to assign prisoners to MCC under specified conditions and to transfer prisoners out of MCC after a specified period of time, subject to certain conditions, and agreed to alter MCC conditions in many areas. The agreement also provided for inmate access to radios and televisions under specified conditions and at inmate expense; expanded visitation and telephone privileges; availability of additional reading materials; and increased opportunities for prisoner recreation. (Maximum Control Complex, Indiana Department of Corrections, Westville, Indiana)

1995

U.S. District Court
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. Appeals Court
OUTDOOR EXERCISE

Anderson v. Romero, 72 F.3d 518 (7th Cir. 1995). An inmate who was infected with the human immunodeficiency virus (HIV) sued prison officials alleging violation of his constitutional right of privacy and the Illinois AIDS Confidentiality Act. The district court denied the officials' motion to dismiss and they appealed. The court found that to deny all opportunity for exercise outside his cell would violate the Eighth Amendment unless the prisoner posed an acute security risk. If the only reason that prison officials denied the inmate haircuts and yard privileges was that he was HIV-positive, and there was no conceivable justification for the denial as an HIV-fighting measure, then prison officials could not be immune even in the absence of a case involving this type of arbitrary treatment. (Stateville Penitentiary, Illinois)

U.S. District Court
OUTDOOR EXERCISE
SEGREGATION
EXERCISE

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 the defendants were entitled to qualified immunity on the inmate's claim that 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. (Eastern Oregon Correctional Institution)

U.S. District Court
OUTDOOR EXERCISE

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 while regular exercise of some type is crucial for the psychological and physical fitness of inmates, determining what is adequate exercise will depend on the circumstances of each case, including the physical characteristics of the cell and jail, and the average length of stay of inmates. The court found no violation from the denial of outdoor exercise because the detainee had access to printed instructions for calisthenics, the jail made some recreational materials available to detainees, the average stay of a detainee was seven days (although the plaintiff in this case spent nearly six months in confinement), the jail was not crowded during his stay at the jail, and the detainee exercised in his cell at least part of the time he was confined. The court noted that where a prisoner has a reasonable opportunity for exercise and does not allege any significant physical deterioration, there is no Eighth Amendment violation. (Harvey County Jail, Kansas)

U.S. District Court
OUTDOOR EXERCISE

Stone-El v. Sheahan, 914 F.Supp. 202 (N.D.Ill. 1995). A pretrial detainee brought a § 1983 civil rights action against a sheriff, executive director of the county department of corrections, and the superintendent of the county jail. The detainee alleged that various conditions of his confinement violated his right to due process. The district court granted the defendants' motion to dismiss. The court found that the defendants had not personally caused the conditions at the jail, nor could they limit the number of pretrial detainees assigned there or appropriate funds to improve conditions. The court also found that the detainee failed to allege conditions of confinement serious enough to violate the objective component of a due process claim. The detainee alleged a lack of exercise opportunities, but the court found that even dramatic restrictions on outdoor exercise do not violate due process as long as detainees have ample opportunities to participate in indoor activity. The court noted that the detainee failed to allege any harm caused by the poor ventilation or any adverse health effects from the alleged lack of exercise. (Cook County Jail, Illinois)

U.S. District Court
TELEVISION

Temple v. Dahm, 905 F.Supp. 670 (D.Neb. 1995). A prisoner filed a pro se civil rights action against prison officials alleging his rights were violated when he was transferred and housed in a prison "control unit." The district court dismissed the complaint, finding that the prisoner had no right arising from the federal constitution to view television. (Nebraska State Penitentiary)

1996

U.S. Appeals Court
EXERCISE

Antonelli v. Sheahan, 81 F.3d 1422 (7th Cir. 1996). A county jail resident filed a pro se § 1983 action against jail officials, alleging constitutional deprivations. The district court dismissed the suit and the inmate appealed. The appeals court affirmed the lower court decisions regarding some conditions of confinement and issues, including floor-sleeping, theft of his property, lockdowns, denial of access to courts, and denial of opportunity to participate in rehabilitative programs to earn good-time credits. But the appeals court reversed the lower court by finding that several allegations were sufficient to state claims. The inmate's allegation that his health and well being deteriorated while confined because of inadequate exercise also stated a § 1983 claim. The inmate alleged that he was restricted to his cell or unit for extended periods of time and had insufficient space to exercise in his unit. (Cook County Jail, Illinois)

U.S. District Court
OUTDOOR EXERCISE

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 granted the motion with regard to the prison's alleged failure to provide warm clothing for inmates who wished to participate in outdoor exercise. The court found that it was likely the prisoner would demonstrate that he

was unconstitutionally denied the opportunity for outdoor exercise. Prison officials did not dispute the prisoner's allegations that prisoners such as himself who were housed in a special housing unit were issued only summer weight clothing and nonwaterproof footwear, and that the prisoners of that unit shared "community" lightweight jackets. The district court stated that refusing to provide adequate clothing for outdoor exercise during cold weather was tantamount to refusing to provide outdoor exercise, which would constitute cruel and unusual punishment. (Auburn Correctional Facility, New York)

U.S. District Court
OUTDOOR EXERCISE
SEGREGATION

Estep v. Dent, 914 F.Supp. 1462 (W.D.Ky. 1996). An inmate moved for a preliminary injunction in this suit against prison officials. The district court denied the motion with regard to the inmate's allegation that he was deprived of opportunities for outdoor exercise while he was housed in a particular housing unit. The court noted that prison officials had already begun to build an outdoor recreation site for that unit and therefore recognized the need and were resolving the problem. The court also denied the motion with regard to the inmate's assertion that his safety was endangered because prison officials allowed inmates of different classifications to exercise together. (Kentucky State Penitentiary)

U.S. Appeals Court
SEGREGATION

Hosna v. Goose, 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
OUTDOOR EXERCISE
SEGREGATION

Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996). An inmate brought a § 1983 action against prison officials and employees. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed in part and reversed in part, finding that summary judgment was precluded for several allegations. The inmate was found to have presented sufficient evidence to preclude summary judgment on his claim that he was deprived of outdoor exercise, in violation of his constitutional rights, while he was confined for six months at the maximum security prison. (Oregon State Prison)

U.S. District Court
OUTDOOR EXERCISE

Kropp v. McCaughtry, 915 F.Supp. 85 (E.D.Wis. 1996). A state inmate filed a § 1983 action against a prison warden and security director alleging cruel and unusual punishment in violation of his Eighth Amendment rights. The court found that temporary denial of the inmate's outdoor exercise while outside recreation modules were being constructed did not violate the inmate's rights. The inmate was not denied the right to exercise in his cell and once he was transferred to the general population he was able to exercise outside several times a week. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
TELEVISION
RADIO

Manley v. Fordice, 945 F.Supp. 132 (S.D.Miss. 1996). Inmates brought an action challenging the constitutionality of a Mississippi statute prohibiting the use of television and radios, except in the work incentive program or the inmate discipline program. The district court held that the statute did not violate the inmates' rights under the Religious Freedom Restoration Act (RFRA) because the inmates had alternative means of religious practices such as chaplains, religious services and religious literature. The court found that denying television and radio privileges was not cruel and unusual punishment under the Eighth Amendment, even if the denial of media privileges caused psychological harm. The court found that the statute was rationally related to increasing incentives for prisoners to enter work and educational programs, and to promote good behavior, and therefore did not violate the equal protection clause or the free exercise clause of the First Amendment. (Mississippi Department of Corrections)

U.S. District Court
TELEVISION

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
OUTDOOR EXERCISE

Thomas v. Ramos, 918 F.Supp. 228 (N.D.Ill. 1996). A prisoner brought a § 1983 action against prison officials alleging violation of his due process rights in connection with his confinement in a segregated cell. During his approximately 70 days of segregation, prison officials denied the

prisoner the opportunity to exercise in the prison yard. The district court granted summary judgment for the defendants, finding that the hardship imposed by the 70-day period without outdoor exercise was not sufficiently atypical or significant to implicate any liberty interest protected by due process. The court also found that the inmate's right to outdoor exercise was not clearly established at the time of the alleged deprivation (1994), entitling the defendants to qualified immunity from liability under the civil rights statute. (Stateville Correctional Center, Illinois)

U.S. District Court
SEGREGATION
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. District Court
EXERCISE

Williams v. Greifinger, 918 F.Supp. 91 (S.D.N.Y. 1996). An inmate who refused to submit to a tuberculosis (TB) test was segregated pursuant to a corrections policy. While segregated the inmate was denied opportunities to participate in any exercise activities outside of his cell. The inmate sued corrections officials, alleging that the policy was unconstitutional. The district court found that denial of all exercise opportunities while in segregation violated the inmate's rights, but that the defendants were entitled to qualified immunity. The court noted that the ability of the inmate to end his segregation by submitting to the TB test did not cure the Eighth Amendment violation inherent in his disciplinary confinement. The court also found that the defendants were deliberately indifferent to the inmate's serious medical needs for exercise. However, because it was reasonable for the defendants to believe that the challenged policy did not violate the inmate's rights at the time (1993), they were entitled to qualified immunity and summary judgment was granted in their favor. On appeal, the appeals court reversed with regard to immunity, finding that the officials were not entitled to qualified immunity. (Ossining Correctional Facility, New York)

1997

U.S. District Court
OUTDOOR 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. District Court
SEGREGATION

Dawes v. Coughlin, 964 F.Supp. 652 (N.D.N.Y. 1997). A prisoner brought a § 1983 action alleging that corrections officers had used excessive force against him, failed to provide medical treatment, and improperly issued deprivation and restraint orders. The court found that the prisoner's due process rights were not violated by deprivation orders or restraining orders because the deprivation order was reviewed daily and the restraining orders were not continued for more than seven days without review. The orders, which limited the prisoner's recreation to one hour at a time in full restraints, did not violate the Eighth Amendment because safety and security purposes required the restraints and the prisoner was still able to move around the recreation area. (Eastern Correctional Facility, New York)

U.S. District Court
SEGREGATION
RECREATION

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 entered summary judgment for the officials. The court found that denial of work opportunities and certain educational programs for inmates in segregated housing did violate the due process clause or the Eighth Amendment. The court also found that denial of transfers to other facilities so that inmates could practice their religious diet did not violate the First Amendment, the Religious Freedom Restoration Act (RFRA), the equal protection clause or the Eighth Amendment where the inmates failed to present evidence that they had not received a proper religious diet at the facility at which they were incarcerated. The court held that allegedly small recreation facilities provided to segregated inmates did not violate the Eighth Amendment or the equal protection clause; individual exercise areas measuring approximately 8 feet by 20 feet were provided, and the inmates were permitted at least six hours of outside recreation per week. The court held that officials did not violate the Eighth Amendment with respect to lead in the prison water system because the officials reviewed the situation and informed staff and inmates of the steps they needed to take to safeguard themselves from exposure. (Mecklenburg Correctional Center, Virginia)

U.S. District Court
OUTDOOR EXERCISE
RECREATION

Jones v. City and County of San Francisco, 976 F.Supp. 896 (N.D.Cal. 1997). Pretrial detainees brought a class action against the City and County of San Francisco and various city officials challenging the constitutionality of their conditions of confinement

at a jail. The district court granted various summary judgment motions filed by the plaintiffs and the defendants, enjoining future overcrowding based on past unconstitutional overcrowding. The court found due process violations based on the defendants' inadequate response to fire safety risks at the jail, excessive risks of harm from earthquakes, physical defects in the jail's water, plumbing and sewage systems, excessive noise levels, and poor lighting. The court held that the plaintiffs failed to show deliberate indifference or another basis for liability on the claims of current overcrowding, inadequate food preparation and storage, provision of medical services, personal visitation, hours and accessibility of legal visitation, legal materials and assistance, and outdoor recreation. The court noted that pretrial detainees enjoy the greater protections afforded by the Fourteenth Amendment's due process clause, rather than the Eighth Amendment's protection against cruel and unusual punishment.

The court found that the detainees' rights were not violated by the jail's outdoor recreation conditions which were substantially improved by the defendants. Detainees were offered approximately six hours of outdoor exercise per year and the defendants had hired a recreation coach to ensure safe and healthy exercise habits. Although clothing remained inadequate for cold weather, the shortage of suitable garments typically did not prevent inmates from using the yard. (San Francisco Jail No. 3, California)

**U.S. Appeals Court
SEGREGATION
OUTDOOR EXERCISE**

Thomas v. Ramos, 130 F.3d 754 (7th Cir. 1997). A prison inmate brought a § 1983 action against prison officials alleging violation of his due process rights in connection with his confinement for approximately 70 days in a segregated cell, and for the alleged denial of opportunities to exercise in a prison yard while he was in segregated confinement. The district court entered summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate's 70-day confinement in disciplinary segregation did not implicate liberty concerns within the meaning of the due process clause. The court also held that the official who allegedly refused to allow the inmate to exercise in the yard while he was in segregation was entitled to qualified immunity because the lack of exercise did not violate the inmate's clearly established rights. According to the court, there was evidence that the inmate could have engaged in some exercise in his cell, he may have missed some opportunities for yard time by choosing to visit the medical unit, and during part of his confinement all inmates were prevented from using the yard as part of a "lockdown" status. According to the court, a prison inmate's lack of exercise may rise to a constitutional violation in certain limited circumstances where movement is denied and muscles are allowed to atrophy and the health of the inmate is threatened. The court also found that the inmate did not have a protectible liberty interest in his loss of commissary privileges. (Stateville Correctional Center, Illinois)

**U.S. District Court
OUTDOOR EXERCISE
RECREATION**

Williams v. Price, 25 F.Supp.2d 605 (W.D.Pa. 1997). Death row inmates challenged their conditions of confinement in a civil rights action. The district court granted summary judgment in favor of the officials for most of the allegations. The court found that strip searches of inmates, including viewing of bodily cavities, before and after sessions with their attorneys, did not violate the inmates' Fourth Amendment rights. The court also found that the inmates were not denied equal protection because they were allowed only one hour of recreation per day, while inmates in another death row facility had two hours per day. The court held that the inmates' equal protection rights were not violated when they were denied access to recreational materials that were made available to inmates at other death row facilities, where there were more prisoners in their facility and contraband had been discovered. The court did not grant summary judgment to the defendants on the claim that failure to provide a soundproofed area for conversations between inmates and their attorneys violated the inmates' right to privacy. (State Correctional Institution at Greene, Pennsylvania)

**U.S. District Court
EXERCISE**

Wilson v. Shannon, 982 F.Supp. 337 (E.D.Pa. 1997). An inmate brought a § 1983 action against prison officials alleging violation of his rights in connection with strip searches and denial of exercise. The district court granted summary judgment for the officials, finding that denial of exercise for only eight days in response to disciplinary problems created by the inmate did not indicate deliberate indifference in violation of the Eighth Amendment. The court also held that alleged repeated strip searches of the inmate, both at the library and as the result of a security check of his cell, did not violate the Fourth Amendment because the inmate failed to show that the searches were conducted in an unreasonable manner, even if they were unnecessary. (SCI Frackville, Pennsylvania)

1998

**U.S. Appeals Court
EXERCISE**

Craig v. Eberly, 164 F.3d 490 (10th Cir. 1998). A pretrial detainee brought a § 1983 action against a sheriff in his individual capacity, and a county, alleging he was subjected to unconstitutional conditions of confinement while he was confined in the jail. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court reversed and remanded, finding that summary judgment for the sheriff was precluded by the nature, seriousness and duration of the alleged deprivations. The detainee alleged that he was placed in a cell that measured eleven by fifteen feet with five or

six other men for 24-hours a day, that his bed linens were never cleaned nor exchanged, that he was permitted only two showers a week in an unsanitary shower stall, that the sink in his cell frequently clogged and prevented his basic hygiene, that his cell had poor ventilation, and that he was allowed out of his cell for recreation only two times during his confinement. The parties disagreed on the length of the detainee's confinement, which the court found to be between two-and-one-half months and six months. (Otero County Jail, Colorado)

U.S. Appeals Court
OUTDOOR EXERCISE

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. According to the appeals court, the detainee failed to establish a § 1983 claim based on his contention that he was denied the opportunity to participate in outdoor recreation because evidence indicated that he was denied recreation only once because officials misunderstood a note in his file. The court found that an accidental, one-time denial of recreation could not support a constitutional claim. (Madison Street Jail, Maricopa County, Arizona)

U.S. Appeals Court
OUTDOOR EXERCISE
EXERCISE

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)

1999

U.S. District Court
OUTDOOR EXERCISE
SEGREGATION

Bass v. Perrin, 170 F.3d 1312 (11th Cir. 1999). State inmates brought a § 1983 action against prison officials challenging prison practices which suspended outdoor exercise periods for inmates who are subject to solitary confinement. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court held that the denial of outside exercise time did not violate the Eighth Amendment nor equal protection. The court noted that the pain suffered as the result of the complete denial of outdoor exercise for inmates in solitary confinement was neither wanton nor unnecessary and had penological justification in light of the violence demonstrated by the inmates. The court added that although the inmates were deprived of a state-created liberty interest, they were afforded due process because they had received written notice of the charges after being placed in the yard suspension list and they were repeatedly made aware of the reasons in writing. (Florida State Prison, Starke, Florida)

U.S. District Court
OUTDOOR EXERCISE

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
EXERCISE
OUTDOOR EXERCISE
SEGREGATION

Perkins v. Kansas Dept. of Corrections, 165 F.3d 803 (10th Cir. 1999). A prisoner brought a pro se civil rights action challenging his treatment following a positive test for the human immunodeficiency virus (HIV). After the test the prisoner was required to wear a face mask whenever he left his cell, was denied a protease inhibitor that he requested, and was denied most opportunities for exercise. The district court dismissed the action and the appeals court affirmed in part, reversed in part and remanded. The appeals court found that the prisoner stated a cause of action for violation of his Eighth Amendment right based on the deprivation of outdoor exercise. The inmate was only allowed to leave his cell for 30 minutes a day and was not

permitted to exercise outside his cell for more than nine months. The prisoner had filed grievances challenging restrictions which were denied. The appeals court also instructed the district court to review the prison's practice of requiring the prisoner to wear a face mask. The appeals court affirmed the district court's dismissal of the allegation that the prison did not provide adequate medical care. The court agreed that the prison's failure to provide a protease inhibitor that the prisoner had requested was merely a disagreement with medical staff about the course of his treatment. (El Dorado Correctional Facility, Kansas)

U.S. District Court
OUTDOOR EXERCISE

Richard v. Reed, 49 F.Supp.2d 485 (E.D.Va. 1999). A prisoner brought a § 1983 complaint alleging that county jail officials violated his Eighth Amendment rights by depriving him of direct sunlight for more than 100 days. The district court dismissed the case, finding that the prisoner failed to state an Eighth Amendment claim because deprivation of sunlight for 100 days was not a sufficiently serious deprivation of a human need. The court held that the case was frivolous. The prisoner was confined in a housing unit comprised of a dayroom which had no windows and ten cells, each of which had a window. Prisoners were not allowed in their cells between 8:30 a.m. and 5:30 p.m. and prisoners who wanted to take recreation could use an indoor recreation area. The prisoner alleged that his health was placed in danger because he was exposed to illness caused by a lack of exposure to direct sunlight. The court suggested that there might be extreme circumstances under which deprivation of sunlight or light for an extended period of time might amount to a serious deprivation, but found this was not such a case. The court cited Charles Dickens's *A Tale of Two Cities* in which a character was imprisoned in the Bastille for almost eighteen years in a small cell "where the light of day has never shone." But after reviewing nine cases that had considered a similar question with varied results, the court concluded that "the threshold for constitutional significance occurs well short of the Dickens example." The court found that the conditions cited by the prisoner did not violate contemporary notions of decency, stating that "This conclusion finds support given that people who serve on nuclear submarines or who live within the Arctic Circle or in Antarctica go without direct exposure to sunlight for similarly long periods of time." The court also noted that the window in the prisoner's cell would provide natural light in the summertime when he was allowed back into the cell at 5:30 p.m. (Fairfax County Adult Detention Center, Virginia)

U.S. District Court
INDOOR EXERCISE

Robeson v. Squadrito, 57 F.Supp.2d 642 (N.D.Ind. 1999). Inmates brought an action against a county and jail officials alleging violations of their Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The court held that the conditions of confinement in the overly-crowded jail did not rise to the level of deprivations of "the minimal civilized measures of life's necessities." According to the court, the cumulative conditions of confinement in the crowded county jail did not rise to the level of deprivations required to find an Eighth Amendment violation, even though the inmate was required to sleep on a thin mattress on the floor, had one shower, was assaulted by another inmate, was not taken to a gymnasium, was given small servings of food, and was initially denied an "indigent pack" of hygiene items. The court noted that the inmate had a blanket, clean sheets, functional toilets, sinks, drinking fountain and television, he exercised in the cell, and he did not suffer any injury as a result of the assault. (Allen County Jail, Indiana)

U.S. District Court
EXERCISE

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 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. (Allen County Jail, Indiana)

U.S. District Court
OUTDOOR
RECREATION

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

U.S. District Court
OUTDOOR EXERCISE

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

U.S. Appeals Court
OUTDOOR EXERCISE

Lopez v. Smith, 203 F.3d 1122 (9th Cir. 2000). A state prisoner brought a § 1983 action against prison officials alleging numerous violations of his constitutional rights. The district court dismissed in part and entered summary judgment in favor of the officials on the remaining claims. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by questions of fact as to whether the officials intentionally interfered with previously prescribed medical treatment for the prisoner's broken jaw by failing to provide a liquid diet and failing to return the prisoner to the hospital for treatment. The appeals court also held that the alleged denial of all access to outdoor exercise during the six and one-half weeks following the jaw injury was sufficient to meet the objective requirement for an Eighth Amendment claim. (Corcoran State Prison, California)

U.S. District Court
SEGREGATION

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

U.S. District Court
SEGREGATION

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. District Court
OUTDOOR EXERCISE

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 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. (Maximum Security Facility, Lorton Correctional Complex, District of Columbia)

U.S. Appeals Court
OUTDOOR EXERCISE

Pearson v. Ramos, 237 F.3d 881 (7th Cir. 2001). A state prisoner brought a § 1983 action against the superintendent of a prison's disciplinary segregation unit, seeking damages for harm allegedly suffered as the result of being denied access to outdoor exercise for a year. The district court

entered judgment upon jury verdict for the prisoner, and the superintendent appealed. The appeals court reversed, finding that the imposition of four consecutive 90-day denials of prison yard privileges for serious violations of prison disciplinary rules was not cruel and unusual punishment. The court noted that even if the sanctions had been found to be cruel and unusual, the prisoner was not entitled to punitive damages or to a finding of liability on the part of the superintendent. The district court jury had awarded the prisoner \$15,000 in compensatory damages and \$50,000 in punitive damages, but the judge had cut the punitive damages award to \$15,000. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
SEGREGATION

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
SEGREGATION
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)

2002

U.S. District Court
EXERCISE

Allah v. Al-Hafeez, 208 F.Supp.2d 520 (E.D.Pa. 2002). A prisoner brought a civil rights action against prison officials. The district court granted summary judgment in favor of the defendants. The court held that the prisoner's two-month exclusion from religious services did not violate his First Amendment rights, in light of security and economic concerns. The prisoner had challenged a prison chaplain about the chaplain's teaching and the two had a disagreement, resulting in his exclusion from services for two months. (State Correctional Institution at Frackville, Pennsylvania)

U.S. Appeals Court
TELEVISION

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. Appeals Court
MOVIES

Wolf v. Ashcroft, 297 F.3d 305 (3rd Cir. 2002). Federal prisoners brought a class action challenging a prison policy that prevented prisoners from viewing movies with a rating of "restricted" or higher. The district court entered judgment on the pleadings in favor of the government. The appeals court reversed and remanded. The appeals court held that the district court did not conduct a "proper, thorough analysis" under *Turner v. Safley* because it did not articulate a relevant penological interest or the prohibition's relationship to it, and considered only the first prong of *Turner*. The appeals court held that the district court should not have relied on "common sense" in determining whether the first prong was satisfied, noting that whether the requisite connection may be found solely on the basis of common sense depends on the nature of the right, the nature of the interest asserted, the nature of the prohibition, and the obviousness of the connection to the interest. The district court had concluded that the policy was neutral and was reasonably and rationally related to a legitimate penological interest. (Federal Bureau of Prisons)

2003

- U.S. District Court
OUTDOOR
RECREATION
OUTDOOR EXERCISE
- 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. District Court
OUTDOOR EXERCISE
CLOTHING
- Gerber v. Sweeney*, 292 F.Supp.2d 700 (E.D.Pa. 2003). State prison inmates brought a § 1983 action against prison officials, alleging that they were provided with a nutritionally inadequate diet, received inadequate medical care, and were subjected to the use of excessive force. The district court granted summary judgment in favor of the defendants. The court held that the denial of the inmates' request for hats and gloves, and for shoes instead of sandals, to wear during outdoor recreation in winter months did not violate their Eighth Amendment right to regular exercise. The court noted that the inmates failed to show that protracted periods of inclement weather, foreclosing outdoor activity, occurred with any frequency. (Lehigh County Prison, Pennsylvania)
- U.S. Appeals Court
SEGREGATION
- Phillips v. Norris*, 320 F.3d 844 (8th Cir. 2003). A state prison inmate brought a § 1983 action against corrections officials, alleging violations of his rights based on his disciplinary confinement on the charge of carrying contraband. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that denial of contact visitation, exercise privileges, and religious services for 37 days during segregation, did not amount to an atypical and significant hardship. (East Arkansas Regional Unit, Arkansas Department of Correction)
- U.S. District Court
SEGREGATION
- Skundor v. McBride*, 280 F.Supp.2d 524 (S.D.W.Va. 2003). An inmate brought claims against corrections officials, challenging visual body cavity searches. The district court granted summary judgment in favor of the defendants. The court held that the prison practice of performing visual body cavity searches when dangerous, sequestered prisoners left a recreation area, was rationally related to the legitimate penological objective of staff safety and did not violate the prisoners' Fourth Amendment rights. The court noted that there was a potential for the exchange of weapons in the recreation area, and that prisoner privacy was addressed by using only male staff to perform the searches, and positioning the staff between the inmate and anyone else who might view him. According to the court, the searches were an efficient way to steadily process the large number of inmates seeking recreation, and there were no readily available alternatives to the recreation yard searches. (Mount Olive Correctional Center, West Virginia)
- U.S. District Court
SEGREGATION
- 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 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. District Court
OUTDOOR
RECREATION
- Smith v. Barber*, 316 F.Supp.2d 992 (D.Kan. 2004). Five high school students who were arrested for plotting an armed attack on a school sued city and county officials under § 1983, alleging violations of the Fourth Amendment relating to searches and their arrest, malicious prosecution, and violations of the Eighth Amendment. The district court granted summary judgment in favor of the defendants. The court held conditions of pretrial detention in a county jail did not violate the Eighth Amendment where state law required the juveniles to be held separate from adults, the students were only held from 11 to 21 days, and they were allowed outside. The court found that the requirement that they clean their own cells did not implicate the Eighth Amendment. The court also held that a detention hearing broke the chain of causation required to support a claim for malicious prosecution. (Labette County Jail, Kansas)
- U.S. Appeals Court
TELEVISION
RECREATION
- Wirsching v. Colorado*, 360 F.3d 1191 (10th Cir. 2004). A convicted sex offender who refused to comply with the requirements of a treatment program filed a § 1983 claim. The district court granted summary judgment against the offender and he appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that prison officials did not violate the offender's rights of familial association and his due process rights by refusing to allow visits between his child and himself due to his refusal to comply with the requirements of the treatment

program. The court found that the offender's Eighth Amendment rights were not violated by a requirement that he participate in a treatment program that required him to admit that he had committed a sex offense, or forego visitation privileges with his child and the opportunity to earn good time credits at the higher rate available to other prisoners. The department of corrections had a policy that inmates who refuse to participate in labor, educational or work programs, or who refuse to undergo recommended treatment programs, are placed on a Restricted Privileges Status. Because of his placement in Restricted Privileges Status, the offender: (1) could not have a television or radio in his cell; (2) could not use tobacco; (3) had no canteen privileges; (4) had certain personal property removed from his cell; (5) could not engage in recreation with other prisoners; and (6) was required to wear orange pants. (Colorado Department of Corrections)

U.S. District Court
SEGREGATION

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

2005

U.S. District Court
TELEVISION

Henderson v. Berge, 362 F.Supp.2d 1030 (W.D.Wis. 2005). A state prison inmate brought a § 1983 action against prison officials for the alleged violation of his rights under the First Amendment Establish Clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the defendants. The court held that the prison's practice of making religious programming available over closed-circuit television to inmates' cells did not violate the Establishment Clause. The court found that the religious broadcasts had a secular purpose of accommodating and protecting inmates' free exercise of religion within the prison's economic and security constraints. According to the court, providing only one satellite channel with religious programming did not have the effect of advancing one religion over another, in that the inmates had a choice among several religious programs, as well as the choice of not watching any religious program. (Wisconsin Secure Program Facility, Wisconsin)

U.S. District Court
INDOOR EXERCISE
RESTRAINTS

Reimann v. Frank, 397 F.Supp.2d 1059 (W.D.Wis. 2005). A state prison inmate sued various correctional officials under § 1983 alleging violations of his constitutional rights. The inmate petitioned for the right to proceed in forma pauperis and the district court granted the petition in part, and denied it in part. The court held that denial of weight training facilities was not an Eighth Amendment violation where there was no showing that a corrections official knew that weight training was necessary to treat the inmate's femoral neuropathy and other leg ailments. The court also held that a warden and nurse practitioner did not violate the inmate's Eighth Amendment rights by denying him access to indoor recreational facilities that were needed for the rehabilitation of his leg. They had been following a regulation that barred inmates who were on "low bunk restriction" due to medical conditions from indoor recreation. The court found that the inmate stated an Eighth Amendment claim with his allegations that a nurse practitioner countermanded an earlier order of a physician that only soft restraints were to be used. The court noted that there was a possibility that the nurse practitioner sought to deliberately inflict pain, rather than implement a differing medical assessment of the inmate's condition. (Stanley Correctional Institution, Wisconsin)

U.S. Appeals Court
OUTDOOR EXERCISE

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. (Pontiac Correctional Center, Illinois)

2006

U.S. District Court
TELEVISION

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
OUTDOOR EXERCISE
SEGREGATION

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
RECREATION

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. District Court
OUTDOOR EXERCISE

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

U.S. District Court
OUTDOOR EXERCISE

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

U.S. District Court
MOVIES

Jewell v. Gonzales, 420 F.Supp.2d 406 (W.D.Pa. 2006). A class of inmates brought an action against the U.S. Attorney General, the Director of the Federal Bureau of Prisons and a warden, challenging the constitutionality of a program statement and institutional supplement prohibiting the showing of unedited R-rated movies to inmates. The parties cross-moved for summary judgment. The district court granted summary judgment in favor of the defendants. The district court held that the class of inmates had standing to challenge the constitutionality of the program statement and institutional supplement. According to the court, the prohibition lacked a rational connection to the legitimate governmental interest of advancing punishment and deterrence, as required for the prohibition to pass muster under the First Amendment. The court also found that the prohibition lacked a rational connection to the legitimate governmental interest of providing a safe and non-hostile work environment to prison employees, where the government failed to establish that individuals who had chosen corrections work would have been strongly offended by the showing of R-rated films. But the court held that the prohibition did have a rational connection to the legitimate governmental interest of ensuring efficient allocation of prison resources, as required for the prohibition to pass muster under the First Amendment, because the rule amendment authorizing the prohibition was aimed at ensuring that taxpayers' money was spent on reasonable measures to maintain and secure prisoners rather than on unnecessary luxuries. The court also found that the prohibition had a rational connection to a legitimate governmental interest of promoting the rehabilitation of federal inmates, where the government reasonably viewed R-rated films as a medium which often contained types of negative messages, references or stimuli that reinforced criminogenic risk factors. The court noted that the prohibition preserved an alternative means for prisoners to exercise their First Amendment rights because inmates retained access to films rated G, PG, and PG-13 as well as cable television programming and R-rated films edited for standard television, and that such an accommodation would not have had an impermissible ripple effect upon prison resources. (Federal Correctional Institution, McKean, Pennsylvania)

- U.S. District Court
OUTDOOR EXERCISE
Jones v. Garcia, 430 F.Supp.2d 1095 (S.D.Cal. 2006). A state prisoner filed a complaint pursuant to § 1983, alleging that prison defendants denied him outdoor exercise for approximately thirty-five weeks in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants. The court held that the prisoner's Eighth Amendment rights were not violated because the period without exercise was not the result of prison defendants' deliberate indifference or motivated by malicious and sadistic intent to harm or punish him, but rather, was motivated by a desire to ensure the safety and security of the staff and inmates. The period without exercise began as a result of racial tension and violence and culminated in an inmate's murder. (Calipatria State Prison, California)
- U.S. District Court
EXERCISE
OUTDOOR EXERCISE
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 noted that the inmate's alleged weight loss was contrary to the uncontroverted facts, where the inmate did not allege that he was not fed while at jail but that he was not allowed to exercise out of his cell, and it was not clear how a lack of exercise would have caused weight loss. The court found that the lack of outdoor exercise for the pretrial detainee at a small county jail did not violate due process, where the cells were large, the detainee did a wide variety of inside exercises during his stay at jail, and no physical deterioration occurred due to failure to obtain outdoor exercise. (Edwards County Jail, Kansas)
- 2007**
- U.S. District Court
RECREATION
Bigbee v. Nalley, 482 F.Supp.2d 1092 (W.D.Wis. 2007). A federal prisoner sought leave to proceed under the in forma pauperis statute on proposed *Bivens* claims against federal prison officials for monetary, injunctive and declaratory relief. The district court denied leave in part and stayed the decision in part. The court held that the prisoner had no due process protected liberty interest in remaining in a hobby crafts program or in the softball league at a federal correctional institution. (Federal Correctional Institution in Oxford, Wisconsin)
- U.S. District Court
EXERCISE
Kaufman v. Schneider, 474 F.Supp.2d 1014 (W.D.Wis. 2007). An inmate at a supermaximum security prison filed a § 1983 action alleging that prison officials violated his constitutional rights. The inmate filed a motion seeking leave to proceed in forma pauperis. The district court granted the motion in part and denied in part. The court held that the inmate's claim that he was transferred to a maximum security facility in retaliation for his decision to name a warden as a defendant in a civil rights action was not frivolous, and thus the inmate was entitled to proceed in forma pauperis in his § 1983 action, where fact issues remained as to whether the lawsuit motivated the warden's decision to transfer the inmate. The court concluded that the issue of whether the inmate was forced to forgo needed exercise in order to spend time in the law library involved fact questions that could not be resolved on the inmate's motion for leave to proceed in forma pauperis on his Eighth Amendment claim for money damage. Prison officials allegedly had a policy of counting the inmate's law library time as exercise time. (Wisconsin Secure Program Facility)
- U.S. District Court
OUTDOOR EXERCISE
Kaufman v. Schneider, 524 F.Supp.2d 1101 (W.D.Wis. 2007). A former state inmate sued prison officials for declaratory, injunctive, and monetary relief, alleging that he was subjected to retaliatory transfer and that his rights under the First and Eighth Amendments and Religious Land Use and Institutionalized Persons Act (RLUIPA) were violated. The court granted the officials' motion for summary judgment. 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
OUTDOOR EXERCISE
SEGREGATION
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 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
OUTDOOR EXERCISE
SEGREGATION
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
SEGREGATION

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'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. District Court
TELEVISION

Sanders v. Ryan, 484 F.Supp.2d 1028 (D.Ariz. 2007). A hearing-impaired inmate brought a civil rights action against a prison official and the State of Arizona, claiming his rights were violated under the Religious Land Use and Institutionalized Persons Act (RLUIPA), the First Amendment, Arizona civil rights laws, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants. The court held that the state's failure to rebut the hearing-impaired inmate's evidence in opposition to a summary judgment motion that the prison denied him access to his bi-aural headphones, allowed the inference of discriminatory animus, as required to establish a claim under Title II of the Americans with Disabilities Act (ADA). The inmate had arranged to have four items, including the headphones, shipped to the prison before the effective date of the rule limiting prisoners' possessions, and the prison issued a television and a calculator but not headphones. The court held that the state's refusal to issue the hearing-impaired inmate bi-aural headphones so that he could watch television did not violate his First Amendment rights, where the inmate did not have a right to watch television, he was still able to receive information, ideas, and messages through books, magazines and newspapers, and the inmate acknowledged in his complaint that he was able to hear his television without his hearing aids. (Arizona Department of Corrections)

U.S. Appeals Court
EXERCISE

U.S. v. Ramirez-Gutierrez, 503 F.3d 643 (7th Cir. 2007). A defendant pled guilty in the district court to reentering the United States illegally after being deported. On appeal, the court held that the conditions of the defendant's pretrial confinement were not so substandard or onerous as to warrant special consideration at sentencing, and the sentencing judge considered the defendant's claim that he committed crimes because of substance abuse problem. The defendant complained that he was unable to obtain care for his broken tooth, lived in poorly ventilated quarters, and was given inadequate opportunity to exercise during his two and a half month detention. (Kankakee County Detention Center, Illinois)

2008

U.S. District Court
TELEVISION

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. (Orleans Parish Prison, Louisiana)

U.S. District Court
CLOTHING

Lindell v. Schnleiter, 531 F.Supp.2d 1005 (W.D.Wis. 2008). A prison inmate brought a § 1983 action against state prison employees, claiming violations of his Eighth and First Amendment rights. The defendants moved for summary judgment. The court granted the motion in part and denied the motion in part. The court held that the employees did not exhibit deliberate indifference to the medical condition of the inmate, in violation of the Eighth Amendment, by limiting him to 2.5 hours of exposure to sunlight per week. The court found that the inmate failed to show a health risk associated with his being forced to use unwashed outerwear when exercising. The court ruled that summary judgment was precluded by fact issues as to whether a corrections officer directly told the inmate that he was being denied access to a desired program because he filed complaints, whether another officer failed to intervene when the inmate was told he was being retaliated against, and as to the existence of direct evidence of retaliation. The court noted that there was evidence that two prison security officers directly stated that the inmate was being placed in restricted housing and denied participation in a desired program because he brought administrative complaints. (Wisconsin Secure Program Facility)

U.S. District Court
OUTDOOR EXERCISE

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

it was clearly established at the time of the deprivation that state prison officials' denial of outdoor exercise for inmates for an extended period of time could constitute an Eighth Amendment violation, and thus the officials were not entitled to qualified immunity from liability. (Calipatria State Prison, California)

U.S. Appeals Court
SEGREGATION

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
SEGREGATION

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 held that providing pretrial detainees housed in administrative segregation only 90 minutes of exercise per week, less than 13 minutes per day, constituted punishment in violation of due process standards. The court found that an order requiring that inmates in administrative segregation be permitted exercise at least twice each week for a total of not less than 2 hours per week was necessary to correct the current and ongoing violation. The court held that restrictions placed on use of the day room, limiting administrative segregation detainees' use of the room to one or two inmates at a time, were reasonably related to institutional security concerns. (Orange County Jail System, California)

U.S. District Court
OUTDOOR EXERCISE

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

2009

U.S. District Court
OUTDOOR EXERCISE

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. 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
EXERCISE
SEGREGATION

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
SEGREGATION

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. 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. District Court
OUTDOOR EXERCISE

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

U.S. District Court
EXERCISE

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 and 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)

2010

U.S. District Court
EXERCISE
OUTDOOR EXERCISE

Antonetti v. Skolnik, 748 F.Supp.2d 1201 (D.Nev. 2010). A prisoner, proceeding pro se, brought a § 1983 action against various prison officials, alleging various constitutional claims, including violations of the First, Fifth, Sixth, Eighth and Fourteenth Amendments. The district court dismissed in part. The court held that the prisoner's allegations were factually sufficient to state a colorable § 1983 claim that prison officials violated the Eighth Amendment by depriving him of needed medical care. The prisoner alleged that he was housed in segregation/isolation, leading to a mental health breakdown, and: (1) that he was seen by mental health professionals eight times over a five year period instead of every 90 days as required by administrative regulations; (2) that mental health professionals recommended he pursue art and music for his mental health but that prison officials denied him the materials; (3) and that the officials' actions resulted in the need to take anti-psychotic and anti-depression medications due to suffering from bouts of aggression, extreme depression, voices, paranoia, hallucinations, emotional breakdowns and distress, unreasonable fear, and systematic dehumanization. The court found that the prisoner's allegations that he was subjected to a policy of a minimum of five hours of outside exercise per week but that administrative regulations provided for a minimum of seven hours and controlling consent decrees required eight hours, were sufficient to state a colorable § 1983 claim under the Eighth Amendment. The court found that the prisoner's allegations were sufficient to state a colorable § 1983 Eighth Amendment claim for violation of his right to be free of cruel and unusual punishment where the prisoner alleged the exercise provided to him was to stand in a completely enclosed cage alone, in extreme heat or cold without water, shade, exercise equipment or urinals, and that as a result he suffered sunburns, cracked and bleeding lips and a lack of desire to exercise, resulting in a loss of physical and mental health. (High Desert State Prison, Nevada)

U.S. Appeals Court
RECREATION

Betts v. New Castle Youth Development Center, 621 F.3d 249 (3rd Cir. 2010). A juvenile who had been adjudicated as delinquent brought an action against a residential maximum security center and several staff members for a spinal cord injury that occurred during a “pick-up” football game at the center. The district court granted summary judgment for the center and its staff. The juvenile appealed. The appeals court affirmed. The appeals court held that the district court did not err in granting Eleventh Amendment immunity to the youth development center, which was a detention facility for juveniles run by the Pennsylvania Department of Public Welfare (DPW), where the DPW was an administrative agency without existence apart from the Commonwealth. The court found that there was not a sufficient likelihood that serious harm would result from juveniles playing tackle football without protective equipment, as required for the juvenile to establish that the center and its officials violated his Eighth Amendment rights. (New Castle Youth Development Center, Pennsylvania)

U.S. Appeals Court
OUTDOOR
RECREATION

Gee v. Pacheco, 627 F.3d 1178 (10th Cir. 2010). A state prisoner, proceeding pro se, brought a § 1983 action against prison officials, alleging violations of the First, Eighth and Fourteenth Amendments. The district court dismissed the complaint with prejudice. The prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's allegations that a prison official intentionally confiscated and destroyed letters sent to him by persons outside the prison “under the guise” of sticker and perfume violations, for the purpose of harassing him, were sufficient to plead violations of his First Amendment speech rights. The court also found that the prisoner's allegations that a prison official returned to him outgoing letters that had “appropriate postage affixed without reason” for failure to mail them, were sufficient to plead a violation of the prisoner's First Amendment speech rights. The court found an alleged First Amendment speech rights violation with the prisoner's allegations that he was given a letter from his sister and that it was confiscated from him due to his incommunicado status, but that it was never returned to him. The court held that the prisoner's allegations that prison officials confiscated canteen items, deprived him of hygiene items for 25 hours and incarcerated him for four weeks in an isolation cell with limited outdoor recreation and lack of access to hygiene items, were insufficient to state a § 1983 claim for violations of the Eighth Amendment. (Wyoming State Penitentiary)

U.S. Appeals Court
OUTDOOR EXERCISE

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
OUTDOOR EXERCISE

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

U.S. Appeals Court
EXERCISE
SEGREGATION

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 found that summary judgment was precluded by a genuine issue of material fact as to whether state prison officials were deliberately indifferent to the need for exercise of a prisoner who was subjected to prison lockdowns. (High Desert State Prison, California)

U.S. Appeals Court
OUTDOOR EXERCISE
SEGREGATION

Thomas v. Ponder, 611 F.3d 1144 (9th Cir. 2010). A state prisoner brought a § 1983 action against prison officials, alleging violations of the Eighth Amendment. The district court granted the officials' motion for summary judgment and the prisoner appealed. The appeals court reversed and remanded. The court held that the prison officials knew that a serious risk of harm existed for the prisoner, who was denied exercise for nearly 14 months, as required for the prisoner's § 1983 action. According to the court, officials made and reviewed a decision to keep the prisoner

confined without out-of-cell exercise, and the prisoner submitted repeated written and oral complaints. The court found that summary judgment was precluded by a genuine issue of material fact as to whether prison officials acted reasonably in confining the prisoner for nearly 14 months. The court noted that officials may be more restrictive than they otherwise may be if a genuine emergency exists, and certain services may be suspended temporarily, but the court found that even where security concerns might justify a limitation on permitting a prisoner to mingle with the general prison population, such concerns do not explain why other exercise arrangements are not made. (Salinas Valley State Prison, California)

U.S. District Court
EXERCISE
SEGREGATION

Young v. Ericksen, 758 F.Supp.2d 777 (E.D.Wis. 2010). A state prisoner brought a § 1983 action claiming correctional officers and staff violated his constitutional rights by refusing to allow him to exercise outside his cell for almost an entire year and that they violated the Religious Land Use and Institutionalized Person Act (RLUIPA) by refusing to allow him to attend religious services and meet with an Imam. The district court denied the defendants' motion for summary judgment. The court held that summary judgment was precluded by a genuine issue of material fact as to whether prison officials fairly denied the state prisoner out-of-cell exercise. According to the court, for the purposes of the prison officials' claim of qualified immunity from the state prisoner's § 1983 claim, it was clearly established that denying a prisoner out-of-cell exercise for almost an entire year without legitimate penological concerns would constitute a violation of the prisoner's Eighth Amendment rights. (Green Bay Correctional Institution, Wisconsin)

2011

U.S. District Court
TELEVISION
RADIO

Johnson v. Florida Dept. of Corrections, 826 F.Supp.2d 1319 (N.D.Fla. 2011). A hard-of-hearing inmate at a state prison, who had allegedly been denied the benefit of television and radio services provided to other inmates, filed suit against the state department of corrections seeking accommodation in the form of volume-boosting listening devices, and alleging violations of the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Equal Protection Clause of the Fourteenth Amendment. The defendant moved to dismiss. The district court denied the motion. The court held that even though the inmate was transferred to a different prison after filing grievances and prior to filing suit, he sufficiently exhausted his administrative remedies under PLRA, since officials had been alerted to his problem and had the opportunity to resolve it before being sued. The court noted that even though the prison to which the inmate had been transferred would require him to have different adaptive technology than the type which he had originally sought, his claim arose from the same continuing failure of the prison to provide him with access to television and radio audio. (Polk Correctional Institution, Florida)

U.S. Appeals Court
OUTDOOR EXERCISE

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)

2012

U.S. District Court
OUTDOOR EXERCISE
SEGREGATION

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 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
OUTDOOR EXERCISE
SEGREGATION

Anderson v. Colorado, 887 F.Supp.2d 1133 (D.Colo. 2012). A mentally ill inmate sued a state, its Department of Corrections (DOC), the DOC's director, and a warden, asserting claims for alleged violations of due process, the Eighth Amendment bar against cruel and unusual punishment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following a bench trial, the district court held that: (1) denying the inmate in administrative segregation any opportunity to be outdoors and to engage in some form of outdoor exercise for period of 12 years was a serious deprivation of a human need; (2) the defendants were deliberately indifferent to the inmate's mental and physical health; (3) the inmate failed to establish that he was denied a necessary and appropriate medication in

violation of ADA and the Rehabilitation Act; (4) the defendants had to assign a department psychiatrist to reevaluate the inmate's current mental health treatment needs and take steps concluded to be appropriate in the psychiatrist's medical judgment; (5) the inmate failed to establish a violation of his rights under the Eighth Amendment, ADA, and the Rehabilitation Act due to the alleged denial of treatment provided by a multidisciplinary treatment team; (6) the inmate had a due process-protected liberty interest in progressing out of administrative segregation; and (7) the new stratified incentive system that was being implemented with respect to inmates in administrative segregation, if used fairly, was consistent with due process. (Colorado Department of Corrections, Colorado State Penitentiary)

U.S. Appeals Court
TELEVISION

Beaulieu v. Ludeman, 690 F.3d 1017 (8th Cir. 2012). Patients who were civilly committed to the Minnesota Sex Offender Program (MSOP) brought a § 1983 action against Minnesota Department of Human Services (DHS) officials and Minnesota Department of Corrections (DOC) officials, alleging that various MSOP policies and practices relating to the patients' conditions of confinement were unconstitutional. The district court granted summary judgment in favor of the defendants and the patients appealed. The appeals court affirmed. The appeals court held that: (1) the MSOP policy of performing unclothed body searches of patients was not unreasonable; (2) the policy of placing full restraints on patients during transport was not unreasonable; (3) officials were not liable for using excessive force in handcuffing patients; (4) the officials' seizure of televisions from the patients' rooms was not unreasonable; (5) the MSOP telephone-use policy did not violate the First Amendment; and (6) there was no evidence that officials were deliberately indifferent to the patients' health or safety. The court held that 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. (Minn. Sex Offender Program)

U.S. Appeals Court
RECREATION
FACILITIES

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
OUTDOOR EXERCISE

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

U.S. Appeals Court
EXERCISE
OUTDOOR
RECREATION
SEGREGATION

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)

2013

U.S. Appeals Court
OUTDOOR
RECREATION

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. (Edgar County Jail, Illinois)

U.S. Appeals Court
SEGREGATION
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
OUTDOOR
RECREATION

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. (SCI Graterford, SCI Greene, Pennsylvania)

U.S. Appeals Court
EXERCISE

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

2014

U.S. District Court
SEGREGATION

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. 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
SEGREGATION

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 officials appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that: (1) reasonable prison officials would not have known that the pretrial detainee's substantive due process rights and procedural due process rights would have been violated by holding him in disciplinary segregated confinement throughout the period of pretrial detention as punishment for conduct that had occurred while he was imprisoned during a prior criminal sentence; (2) the detainee's two prior convictions were not sufficient to establish reasonable expectation after he had been released from custody that he would re-offend; (3) the detainee was not the "prevailing party" for the purpose of attorneys' fees and costs with regard to a declaratory judgment entered on his behalf as it related to his rights as a detainee; (4) 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
OUTDOOR
RECREATION

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) the inmates failed to state that officials were deliberately indifferent to their conditions of confinement; and, (3) 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
RECREATION

Morales v. U.S., 72 F.Supp.3d 826 (W.D.Tenn. 2014). A federal prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA), alleging the Bureau of Prisons (BOP) breached its duty of care, resulting in his assault and injury by another prisoner. The district court held that: (1) the prisoner's administrative claim satisfied FTCA's notice requirements; (2) the BOP breached its duty of care to the prisoner by placing him in a recreation cage with a prisoner with whom he was in "keep-away" status; and (3) the prisoner was entitled to damages under FTCA in the amount of \$105,000. The court noted that officers were not monitoring the recreation cage at the time of attack, and, as a result of such failures, the prisoner suffered 14 stab wounds, nerve damage, and psychological harm. (Federal Bureau of Prisons, FCI- Memphis, Tennessee)

U.S. Appeals Court
SEGREGATION

Wilkerson v. Goodwin, 774 F.3d 845 (5th Cir. 2014). A state prisoner brought a § 1983 action against prison officials, asserting procedural due process violations relating to his lengthy and continuing incarceration in solitary confinement. The district court denied the officials' motion for summary judgment based on qualified immunity. The officials appealed. The appeals court affirmed. The court held that the prisoner's solitary confinement constituted an atypical and significant hardship in relation to the ordinary incidents of prison life, such that a due-process liberty interest in avoiding the deprivation arose. The court noted that the prisoner's incarceration in solitary confinement was approaching an extraordinary 39 years, including 35 years before his transfer to the current prison, the prisoner's solitary confinement was effectively indefinite, and restrictions during solitary confinement were severe, including cell isolation for 23 hours per day, limited physical exercise, and limited human contact. (David Wade Correctional Facility, Louisiana)

2015

U.S. District Court
TELEVISION

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
OUTDOOR EXERCISE
CLOTHING

Diaz v. Davidson, 799 F.3d 722 (7th Cir. 2015). A former state inmate filed an action alleging that prison officials' denial of adequate exercise violated the Eighth Amendment's prohibition against cruel and unusual punishment. The district court entered judgment in the officials' favor and the inmate appealed. The appeals court affirmed. The court held that the officials' failure to provide the inmate with a hat and gloves to wear when he exercised in his

outdoor cell did not violate the Eighth Amendment. The court held that state prison officials' failure to provide the inmate a with hat and gloves to wear when he exercised in his outdoor cell in a prison yard in very cold winter weather did not constitute cruel and unusual punishment, in violation of the Eighth Amendment, even though the inmate was unable to do the chin-ups he needed to prevent the muscles in his back from atrophying because of arthritis, and the indoor cell was not large enough. The court noted that guards gave him what they were required to give him according to the prison's policy without realizing, or being irresponsible in failing to realize, that he needed gloves and a hat to do specific exercises. According to the court, the warden received only one pertinent grievance, which complained that on one occasion the inmate had been left outdoors without a hat and gloves for two hours. (Pontiac State Prison, Illinois)

U.S. Appeals Court
SEGREGATION

Incummaa 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. Appeals Court
OUTDOOR
RECREATION

Prieto v. Clarke, 780 F.3d 245 (4th Cir. 2015). A state prisoner convicted of capital murder and sentenced to death brought a pro se § 1983 action, alleging that his confinement on death row, pursuant to a state policy which required him to be in a single cell with minimal visitation and recreation opportunities, violated his procedural due process and Eighth Amendment rights. The district court dismissed the Eighth Amendment claim, and subsequently granted summary judgment in favor of the prisoner on the due process claim. Prison officials appealed. The appeals court reversed, finding that the prisoner had no due process liberty interest in avoiding confinement on death row. (Sussex I State Prison, Virginia)

U.S. Appeals Court
EXERCISE
OUTDOOR
RECREATION

Smith v. Dart, 803 F.3d 304 (7th Cir. 2015). A pretrial detainee brought action under § 1983 against a county alleging deliberate indifference to his health in violation of the right to the provision of adequate medical treatment under the Due Process Clause of the Fourteenth Amendment, as well as failure to pay adequate wages under the Fair Labor Standards Act (FLSA) for his job in the jail's laundry room. The district court dismissed the case and the detainee appealed. The appeals court held that the detainee sufficiently alleged that the food he received was "well below nutritional value," as required to state a claim under § 1983 for deliberate indifference to his health in violation of the Due Process Clause of the Fourteenth Amendment. According to the court, the detainee's mere assertion that he could not "go outside for recreation" was insufficient to allege that he was deprived of the opportunity to exercise, and thus failed to state a claim under § 1983 for deliberate indifference. The court noted that "...there is a significant difference between a lack of outdoor recreation and an inability to exercise." (Cook County Jail, Illinois)

2016

U.S. District Court
SEGREGATION

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 13: EX-OFFENDERS

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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.

1966

U.S. Appeals Court
VISITING

Walker v. Pate, 356 F.2d 502 (7th Cir. 1966), cert. denied, 384 U.S. 966 (1965). Visits may be denied to a wife with a criminal record. (Statesville State Penitentiary, Illinois)

1975

U.S. District Court
CORRESPONDENCE
VISITING

Farmer v. Loving, 392 F.Supp. 27 (W.D. Vir. 1975). A rule prohibiting correspondence between inmates and former inmates is unconstitutional. A rule prohibiting visiting with former inmates is upheld. (Correctional Unit, Virginia)

1980

U.S. District Court
CLAIMS

Garrett v. United States, 501 F.Supp. 337 (N.D. Ga. 1980). An ex-inmate of Atlanta Federal Penitentiary sued for injuries inflicted upon him while he was incarcerated. The district court held that where the prisoner who assaulted the plaintiff prisoner arrived at the federal penitentiary in Atlanta accompanied by a file showing that he had committed assault upon a correctional officer on three separate occasions, had assaulted another inmate, had murdered an inmate and threatened correctional officers, as well as engaged in fighting and possession of dangerous weapons, the government was negligent in failing to anticipate that he might harm another prisoner and in failing to provide closer supervision of him than was provided. He had been placed in a large area housing 500 to 600 prisoners in multi-tiered cells, manned by two to three guards.

The court found that this negligence was proximate cause of prisoner's injuries so that he would be entitled to damages for loss of earnings, pain he suffered after the incident, and anxiety and mental distress. The legal standard for proximate cause requires the injuries to have been a foreseeable result to the alleged negligence; however, "foreseeability" does not require the anticipation of a particular injury to a particular person but only that anticipation of a general type or category of harm which in ordinary experience might be expected to flow from a particular type of negligence. Failure of the institutional staff to take the individual's prior record of attacks on inmates and guards into account when classifying him, which caused the individual to be placed in general population where he was able to attack plaintiff, was negligence giving rise to liability under the Federal Tort Claims Act. \$5040 was awarded. (Federal Penitentiary, Atlanta)

1990

U.S. District Court
MARRIAGE

Jackson v. Mowery, 743 F.Supp. 600 (N.D. Ind. 1990). A former inmate in a county jail brought a suit against the sheriff alleging the denial of his right to marry. On the sheriff's motion for summary judgment, the U.S. District Court found that the inmate's right to marry was not sufficiently established to give the sheriff notice that denial of any such request was in violation of law, and therefore, the sheriff was entitled to qualified immunity. (Grant County Jail, Indiana)

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
COST OF CONFINEMENT

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. District Court
ACCESS TO COURT

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
RELEASE

Puccini v. U.S., 978 F.Supp. 760 (N.D.Ill. 1997). A former inmate brought a Bivens action against federal prison officials alleging false imprisonment. The district court found that the individual defendants were entitled to qualified immunity and granted them summary judgment. The court also held that the former inmate could not maintain an action under the Federal Tort Claims Act because she did not complain of actions that were investigative or involved law enforcement officers. The court held that the former inmate's due process rights were not violated when she was held in federal custody after the expiration of her state sentence even though her federal sentence had also expired; the inmate had filed a petition and was released. The former inmate sought damages for the 147 days she spent in federal custody after both her state and federal sentences had expired. (Federal Bureau of Prisons)

1998

U.S. District Court
CLAIMS

Jackson v. U.S., 24 F.Supp.2d 823 (W.D.Tenn. 1998). A former inmate brought an action under the Federal Tort Claims Act (FTCA) seeking damages for injuries he suffered in a prison riot. The district court found that the statute of limitations barred the inmate's Eighth Amendment claims. The court denied summary judgment for the defendants, finding it was precluded by genuine issues of material fact regarding the reasonableness of the actions of prison employees in treating the inmate and in locking down inmates during a fire. The inmate suffered a collapsed lung in a fire in housing units that were burning out of control during a prison riot. Prison officials locked down inmates in the housing units, and the court ordered further inquiry into whether delays were caused by negligence on the part of staff. The inmate alleged that a prison officer gave keys to another prisoner to release him during the fire, but he was never released and subsequently inhaled carbon monoxide and suffered a collapsed lung. The court also allowed further proceedings to determine if a federal prison physician exercised a reasonable degree of skill, possessed by others in the medical profession, in treatment the inmate, who was brought to the prison's front gate for evacuation to a local hospital. (Federal Correctional Institution, Memphis, Tennessee)

U.S. District Court
CLAIMS

Roucchio v. Coughlin, 29 F.Supp.2d 72 (E.D.N.Y. 1998). A former inmate brought a § 1983 suit to recover damages from several state officials, alleging he was deprived of his right to procedural due process through the State's revocation of his right to participate in a temporary work release program (TWRP) without giving him an opportunity to be heard until approximately six months later. The district court granted summary judgment in favor of the defendants, finding that the inmate failed to show actual, compensable injuries from the acts of the temporary release committee. The court also found that the defendants were entitled to qualified immunity because the issue of whether the inmate's liberty interest in remaining in the program was sufficient to give rise to a pre-removal hearing was unclear. The former inmate had sought \$600,000 in compensatory damages and \$500,000 in punitive damages from each of the six defendants. (Queensboro Correctional Facility, New York)

U.S. Appeals Court
PARDON

Wilson v. Lawrence County, Mo., 154 F.3d 757 (8th Cir. 1998). A pardoned former inmate sued a county and law enforcement officials asserting state tort law claims and civil rights claims for wrongful arrest and incarceration. The district court declined to exercise supplemental jurisdiction over the state claims and granted summary judgment for the defendants on the civil rights claim. The appeals court reversed the grant of summary judgment, reinstated the state law claims, and remanded the case, finding that the inmate's conviction was invalidated and "expunged by executive order" for § 1983 claim purposes. According to the appeals

court, the pardon "obliterated" the inmate's conviction. After nine years in the prison, the governor pardoned the inmate, finding that "it is clear he did not commit the crime for which he had been incarcerated." After his release, the inmate filed this action against Lawrence County and unnamed law enforcement officials alleging that they conducted a "biased investigation by intimidating and coercing witnesses" and "provided information, knowing it was false and/or misleading or in reckless disregard for the truth." (Lawrence County, Missouri)

1999

U.S. Appeals Court
CLAIMS

Bibeau v. Pacific Northwest Research Foundation, 188 F.3d 1105 (9th Cir. 1999). A former inmate who, while in custody, voluntarily participated in research experiments that tested the effects of radiation on human testicular function, sued the United States and the researchers. The inmate asserted claims for conspiracy to induce fraudulently his participation, fraud, battery, breach of fiduciary duty, strict liability for ultrahazardous activity, and intentional infliction of emotional distress. The district court granted summary judgment for the defendants but the appeals court reversed and remanded. The appeals court held that factual issues about whether the former inmate was, or should have been, aware that he was injured by the experiments precluded summary judgment. The appeals court also held that a private research foundation and a researcher's assistant were not shielded by qualified immunity. (Oregon State Penitentiary and Pacific Northwest Research Foundation)

U.S. District Court
CLAIMS

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
RELEASE

Henderson v. Simms, 54 F.Supp.2d 499 (D.Md. 1999). Released prisoners filed a civil rights action against prison officials alleging that their due process rights were violated when they were reincarcerated. The district court dismissed the case, finding that the prison officials had acted "reasonably, but mistakenly" in making a good faith effort to put into effect what turned out to be a legally erroneous interpretation of a Maryland law concerning "diminution credits." The court held that the rights of the released prisoners to continued liberty and/or to procedural due process under the unique circumstances of this case were not so clearly established at the time that a reasonable official should have known of them or that their conduct violated them. (Maryland Department of Public Safety and Correctional Services)

U.S. Appeals Court
CLAIMS

Jenkins v. Haubert, 179 F.3d 19 (2nd Cir. 1999). A former inmate brought a § 1983 action against a corrections employee who allegedly violated the inmate's right to due process in the course of disciplinary proceedings. The district court dismissed the action but the appeals court vacated the decision and remanded the case. The appeals court held that a former prisoner may bring a § 1983 action to challenge the validity of a disciplinary or administrative sanction that does not affect the overall length of his confinement, without having to show that criminal proceedings terminated favorably in the prisoner's favor. According to the court, "conditions of confinement" is not a term of art, but simply encompasses all conditions under which a prisoner is confined for his term of imprisonment, and any deprivation that does not affect the fact or duration of the prisoner's overall confinement is necessarily a condition of that confinement for the purposes of § 1983. (New York State Department of Correctional Services)

2000

U.S. Appeals Court
CLAIMS

Bowen v. Hood, 202 F.3d 1211 (9th Cir. 2000). Dozens of federal prisoners brought separate actions for habeas corpus relief challenging the decision of the federal Bureau of Prisons that prisoners whose crime of conviction involved possession, carrying or use of a firearm were ineligible for early release based on the successful completion of a drug treatment program. The district court ruled in favor of the prisoners and the Bureau appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the Bureau validly exercised its discretion in barring armed felons from eligibility but that the Bureau could not retroactively apply such a restriction to prisoners who had already been provided with a determination of eligibility. (Federal Correctional Institution, Sheridan, Oregon)

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

Burton v. City of Philadelphia, 121 F.Supp.2d 810 (E.D.Pa. 2000). A former inmate brought a state court action against a city and city officials under § 1983 and state law to recover for injuries he allegedly sustained as a result of the city's failure to timely and adequately treat his abscessed tooth while he was incarcerated. The district court held that the city was immune from common law claims under state law, but that the former inmate stated a § 1983 claim against the city. The former inmate alleged that he had developed a number of severe physical symptoms stemming from a toothache shortly after he was admitted to confinement, and that these symptoms worsened to the point where he developed an abscess in his cheek that eventually burst, leaving a disfiguring facial scar. Although the former inmate conceded that he did receive some medical treatment after the abscess burst, he maintained that such treatment was insufficient and untimely. (Youth Study Center, Philadelphia Department of Human Services)

U.S. District Court
CLAIMS

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
CLAIMS
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
CLAIMS

Kenney v. Hawaii, 109 F.Supp.2d 1271 (D.Hawai'i 2000). A former inmate brought actions against corrections officials alleging constitutional violations arising from their denial of medication to control his seizures. The district court held that prison physicians were not entitled to qualified immunity as to the claims that they were deliberately indifferent to the inmate's medical needs. The court held that the inmate stated a claim by alleging that denial of certain medications caused him to suffer severe body tremors and shakes and that his daily activities were affected. (Halawa Correctional Facility, Hawai'i)

U.S. District Court
PRIVACY
SEX OFFENDER

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 Notification Act)

U.S. District Court
CLAIMS

Perez v. County of Westchester, 83 F.Supp.2d 435 (S.D.N.Y. 2000). A former prisoner brought a § 1983 action against a county and county jail physicians alleging that he was not properly treated for depression and other psychological problems while he was confined. The district court granted summary judgment for the defendants. The court held that the physicians were not liable for violating the former prisoner's rights by placing him a medical isolation unit and taking away his clothing and personal items after he twice made suicidal overtures. (Westchester Co. Jail, N.Y.)

U.S. Appeals Court
CLAIMS

Randell v. Johnson, 227 F.3d 300 (5th Cir. 2000). A former prisoner brought a suit to recover damages under § 1983 for his alleged unconstitutional confinement. The district court dismissed the case and the appeals court affirmed. The appeals court held that the former prisoner who was no longer in custody, and was thus unable to obtain habeas relief, could not recover damages under § 1983 for his alleged unconstitutional confinement absent a showing that some authorized tribunal or other executive body had overturned or otherwise invalidated his conviction. (Texas Board of Pardons and Paroles)

U.S. Appeals Court
CLAIMS

Ward v. Booker, 202 F.3d 1249 (10th Cir. 2000). Former federal inmates brought habeas actions challenging a nationwide federal Bureau of Prisons rule which initially denied them a sentencing reduction available to certain inmates who successfully completed a drug treatment program. The inmates had their sentences enhanced for possession of a firearm. The district court granted relief and the Bureau appealed. The appeals court affirmed, finding that the BOP regulation which categorically denies eligibility for sentence reductions was invalid. The court also found that the case was not moot on the ground that the prisoners had been released to halfway houses to finish the custodial portion of their sentences. (Leavenworth Federal Prison Camp, Kansas)

2001

U.S. District Court
SEX OFFENDER

A.A. v. New Jersey, 176 F.Supp.2d 274 (D.N.J. 2001). Convicted sex offenders challenged the constitutionality of a New Jersey constitutional provision and the Internet Registry Act amendment to the state's "Megan's Law" statute, that authorized a system for making sex

offender registration information publicly available on the Internet. The offenders moved for preliminary injunctive relief and the court granted the motion in part. The court found that the Internet disclosure statute was not punitive in its effects or intent and that the compilation and dissemination of publicly-available information on offenders did not violate their privacy rights. The court noted that the legislature expressly disavowed any intent to inflict additional punishment on offenders and stated that the statute was intended solely for the protection of the public. The legislature prescribed penalties to deter the misuse of information. But the court found that offenders' home addresses were not adequately safeguarded by the Internet disclosure system and the court issued a preliminary injunction limiting disclosure to offenders' county of residence. (New Jersey)

U.S. District Court
CLAIMS

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 claims 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
CLAIMS

Davis v. City of New York, 142 F.Supp.2d 461 (S.D.N.Y. 2001). A former inmate brought § 1983 claims against a city and various public officials to recover damages allegedly suffered when he was kept in medical isolation for a seven-day period after refusing to give a blood sample at initial medical screening for religious reasons, and for not providing him with a vegetarian diet. The district court held that the inmate's right to free exercise was not violated when he was placed in brief medical isolation as a consequence of his refusal to consent to giving a blood sample, but the court found it necessary to review whether the alleged restrictions on shower and telephone access were more severe than were appropriate. The court also found that fact questions precluded summary judgment for the defendants on the claim that the denial of vegetarian meals violated the inmate's free exercise right. (City of New York)

U.S. District Court
CLAIMS

Doan v. Watson, 168 F.Supp.2d 932 (S.D.Ind. 2001). Former inmates filed a § 1983 suit against a former and current sheriff, individually and in their official capacities, alleging unconstitutional strip search policies. The district court granted summary judgment in favor of the former inmates, finding that the jail policy of stripping inmates and requiring them to undergo a delousing procedure was an unreasonable search. According to the court, the policy authorized a blanket strip search without justification. The court noted that the Prison Litigation Reform Act (PLRA) did not require the former inmates to produce evidence of physical injury to pursue their claims. The inmates had been arrested for misdemeanor offenses and were subjected to intake searches before entering the general jail population. (Floyd County Jail, Indiana)

U.S. District Court
CLAIMS

Gayle v. Lucas, 133 F.Supp.2d 266 (S.D.N.Y. 2001). A former prisoner brought a § 1983 action against state correctional officers, alleging they issued false and retaliatory misbehavior reports against him. The district court entered summary judgment for the defendants, finding that uncontradicted evidence indicated that the prisoner committed the offenses for which he had been disciplined. (Sing Sing Correctional Facility, New York)

U.S. District Court
CLAIMS

Ramsey v. Schauble, 141 F.Supp.2d 584 (W.D.N.C. 2001). A former detainee whose finger tip was severed after a sheriff's deputy allegedly shut a cell window on it, brought a pro se complaint against the deputy and the sheriff. The district court held that the detainee stated a cognizable civil rights complaint against the sheriff, and the detainee pled a cause of action under a state law that provided that a keeper of a jail must pay treble damages if he/she does any wrong or injury to a detainee, and is guilty of a Class 1 misdemeanor. The court found that jail officials ignored the detainee's cries for help after he was injured by the deputy and displayed deliberate indifference to his need for quick medical attention to preserve the possibility of reattaching the finger. The detainee was released from custody several hours after he was returned from the hospital, but officials refused to give the detainee pain medication prescribed by the hospital, requiring him to return to the jail periodically over the next several days to receive each pill individually. (Watauga County Law Enforcement Center, North Carolina)

U.S. District Court
CLAIMS
SEX OFFENDERS

Rogers v. Illinois Dept. of Corrections Spec. Unit, 160 F.Supp.2d 972 (N.D.Ill. 2001). Present and former civil detainees in state correctional centers brought an action against psychologists who had recommended their confinement as "sexually violent persons" under Illinois' Sexually Violent Persons Commitment Act (SVPCA). The district court dismissed the claims of the present detainees, noting that they could petition for habeas corpus relief to challenge their current confinement. But the court found that the former detainees asserted a constitutional violation of equal protection by alleging that their race was a motivating factor for selecting them for confinement from a pool of eligible defendants, insofar as their race related to the race of their victims. The former detainees are all African-American offenders who committed crimes against at least one Caucasian victim. (Sheridan Correctional Center and Joliet Correctional Center, Illinois)

- U.S. Supreme Court
SEX OFFENDER
- Seling v. Young, 121 S.Ct. 727 (2001). An inmate who was being held under a state sexually violent predator statute petitioned for a writ of habeas corpus challenging the constitutionality of the law. The case eventually reached the United States Supreme Court, which held that the state supreme court's prior determination that the statute was civil rather than criminal precluded the inmate's double jeopardy and ex post facto challenge based on conditions of confinement. According to the Court, there is no federal constitutional bar to civil confinement of sexually violent predators with untreatable mental conditions, since the state has an interest in protecting the public from dangerous individuals with both treatable and untreatable conditions. (Community Protection Act of 1990, State of Washington)
- U.S. District Court
CLAIMS
- Smith v. Cochran, 216 F.Supp.2d 1286 (N.D.Okla. 2001). A female former inmate filed a § 1983 suit alleging that a state drivers license examiner forced her to have sex with him while she was on work release at the examination center. The district court denied the examiner's motion for summary judgment. The court held that the examiner was acting under the color of state law while he was supervising the inmate and that he was not entitled to qualified immunity. The court found the examiner's alleged actions to be sufficiently outrageous to support the inmate's claim for intentional infliction of emotional distress. The court also held that the examiner's alleged sexual contacts with the prisoner while she was on work release demonstrated use of excessive force sufficiently prevalent to demonstrate a pattern that resulted in alleged injuries that were harmful enough to implicate the Eighth Amendment. The court noted that the work release contract gave the examiner control of the inmate and that the inmate was not free to leave while on work release, and could be subject to punishment if she disobeyed the examiner's commands. (Tulsa Community Correction Center, Oklahoma)
- U.S. District Court
CLAIMS
- Warren v. Shelby County, Tenn., 191 F.Supp.2d 980 (W.D.Tenn. 2001). A former detainee filed a § 1983 action against a county, sheriff, and county jail physician, alleging deliberate indifference to his serious medical needs. The district court dismissed the case, finding that the sheriff was not liable under § 1983 and the county was not subject to municipal liability under § 1983. The court noted that the "mere fact" that the county had a rather elastic and later-criticized policy regarding the scheduling of sick call at the county jail during the detainee's confinement was not, alone, sufficient to establish liability. The detainee alleged that jail officials ignored his repeated requests for medical attention and pain medication. (Shelby County Jail, Tennessee)
- U.S. District Court
CLAIMS
- Wells v. Jefferson County Sheriff Dept., 159 F.Supp.2d 1002 (S.D.Ohio 2001). A former inmate filed a § 1983 action against a county sheriff's department, sheriff and two deputy officers employed at a county jail. The district court granted summary judgment for the defendants. The court found that jail officers were not liable for failing to protect the inmate from another prisoner who had previously attacked him. The officers moved the former inmate to a different cell block upon learning of the history between the inmates, and the former inmate did not allege that he experienced any physical injury as the result of being attacked a second time. The court held that the former inmate's allegations that the single blanket he was allowed in a holding cell was not adequate to keep him warm, and that cockroaches climbed on him while he slept, did not state Eighth Amendment claims where he did not complain to any officers or officials that the cell was uncomfortable or unsanitary. (Jefferson County Jail, Ohio)
- 2002
- U.S. District Court
CLAIMS
- Alexander v. Gilmore, 202 F.Supp.2d 478 (E.D.Va. 2002). Two prisoners, one a current prisoner and one a former prisoner, sued a prison and officials. The district court found that a prisoner's placement in segregated housing following an institutional conviction for being under the influence of drugs, even though a confirmatory urine test was not conducted, was not sufficiently severe to support an Eighth Amendment claim. The court also held that the prisoners did not state a claim under the False Claims Act (FCA) by alleging that the prison had obtained federal funding for drug testing by falsely certifying that the requirements for testing and disposal of samples were being followed. According to the court, the prison, and employees who were acting in their official capacities, were exempt from the FCA and there was no showing that the employees were acting in their individual capacities. (Virginia Department of Corrections)
- U.S. Appeals Court
CLAIMS
- 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
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. Appeals Court
PLRA-Prison Litigation
Reform Act

Dixon v. Page, 291 F.3d 485 (7th Cir. 2002). A former state inmate brought a § 1983 action against prison officials, alleging that they failed to protect him from beatings and harassment from other inmates, and that he was beaten by prison officials in retaliation for filing an administrative complaint. The district court dismissed some of the claims and granted judgment to the defendants as a matter of law on the remaining claims. The appeals court affirmed, finding that the former inmate was not excused from the Prison Litigation Reform Act (PLRA) exhaustion requirement inasmuch as exhaustion was a precondition to filing a complaint in federal court, and the former inmate was still a prisoner when he brought the action. (Menard Correctional Facility, Illinois)

U.S. Appeals Court
CLAIMS

Ford v. County of Oakland, 35 Fed.Appx. 393 (6th Cir. 2002). A female county jail inmate brought a § 1983 action against a county for allegedly maintaining a custom or policy of ignoring sexual harassment and assault claims, and creating an atmosphere that facilitated her rape by a police deputy who was supervising her. The district court granted summary judgment as to the § 1983 municipal liability claim, and the appeals court affirmed. Although the deputy was not suspended from duty until after the sheriff's office had completed its investigation, the court noted that the county had a policy against sexual harassment, disciplined the deputy after the results of a state police report became available, and proffered evidence of three other cases in which officers were disciplined for sexual harassment and assault at the county jail. (Oakland County Jail, Michigan)

U.S. District Court
CLAIMS

Kenney v. Paderes, 217 F.Supp.2d 1095 (D.Hawai'i 2002). A former prison inmate sued prison doctors, alleging they were deliberately indifferent to his medical needs while he was incarcerated. The district court denied the doctor's motion for summary judgment, finding genuine issues of material fact, as to whether the doctor's denial of the medication lorazepam to control the inmate's tremors, was potentially life-threatening and amounted to deliberate indifference. The inmate suffered from a neurological disorder that caused him to experience tremors and lorazepam had been prescribed by all of the inmate's previous doctors, but was denied by the prison doctor. (Halawa Correctional Facility, Hawai'i)

U.S. District Court
CLAIMS

McCurry v. Moore, 242 F.Supp.2d 1167 (N.D.Fla. 2002). A former state inmate brought a pro se § 1983 action against prison officials, individually and in their official capacity, alleging that he was held in prison beyond the expiration of his sentence. The inmate sought nominal, compensatory and punitive damages. The district court held that prison officials could not be held liable for failure to train or adequately supervise a classification officer who denied the former inmate's informal grievance. But the court found that fact issues precluded summary judgment on the claim that the classification officer violated the former inmate's right to timely release from prison. The court also found that other prison officials were not entitled to qualified immunity. (Florida Department of Corrections)

U.S. Appeals Court
CLAIMS

Meloy v. Bachmeier, 302 F.3d 845 (8th Cir. 2002). A former state inmate filed a § 1983 action alleging that prison medical personnel violated his civil rights by failing to provide him with a continuous positive air pressure machine (CPAP) to treat his obstructive sleep apnea. The district court denied summary judgment for the director of the prison's medical services and the director appealed. The appeals court reversed and remanded, finding that the director was entitled to qualified immunity. The appeals court held that the decision of the director to adhere to a prison doctor's order that the prison need not provide the inmate with a CPAP machine was objectively reasonable in light of legal rules in place at the time, entitling the director to qualified immunity. The court noted that the director was functioning in an administrative role, even though she had some medical training as a nurse, and she was not responsible for examining and treating the inmate herself. (North Dakota State Penitentiary)

U.S. District Court
CLAIMS

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 he 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
CLAIMS

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. (Penn. State Correctional Institution at Huntingdon)

U.S. District Court
CLAIMS
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
CLAIMS

Torres v. Fauver, 292 F.3d 141 (3rd Cir. 2002). A former state 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
CIVIL RIGHTS

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
ASSOCIATION

Via v. Taylor, 224 F.Supp.2d 753 (D.Del. 2002). A former correctional officer brought an action against corrections officials alleging that she was wrongfully terminated because of her off-duty relationship with a paroled former inmate. The district court held that the corrections department code of conduct that prohibited off-duty personal contact with offenders was not substantially related to the state's interest in the orderly function of prisons and concerns about being discredited in the public eye. The court found no evidence that the officer's relationship with a former inmate had any impact on staff or inmates. The court noted that the code did not prohibit relationships between prison employees and persons outside the prison system who knew inmates who were under the employees' supervision, and that the officer's job performance was not negatively impacted by her association with the former inmate. The court held that the conduct code was void because of it was vague and overly broad, and violated the officer's off-duty rights to personal association and privacy. The code read, in part: "Trafficking with incarcerated offenders is prohibited. No staff person shall have any personal contact with an offender, incarcerated or non-incarcerated, beyond that contact necessary for the proper supervision and treatment of the offender... Any sexual contact with offenders is strictly prohibited." According to the court, the code was open for discriminatory enforcement, failed to clearly set forth the prohibited conduct, appeared to create a safe harbor for employees who reported relationships that allegedly infringed, and failed to notify officers of possible disciplinary measures to which they might be subjected if they violated the code. The court found that the officials were entitled to qualified immunity because these rights were not clearly established at the time the officer was discharged. (Sussex Correctional Institute)

2003

U.S. Appeals Court
CLAIMS
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
CLAIMS

McCoy v. Goord, 255 F.Supp.2d 233 (S.D.N.Y. 2003). A former inmate brought a pro se § 1983 action against 26 officials and employees of a state corrections department, alleging that his constitutional rights were violated while he was incarcerated. The district court dismissed the

case. The court held that the complaint alleging that a prison psychologist displayed immediate prejudice against the inmate, accused him of being highly litigious, and noted in records from counseling sessions that the inmate appeared to be manipulating the prison's mental health services for possible future litigation or immediate gratification, did not support claims for deliberate indifference. The court found that the mental health employee did not act with deliberate indifference, notwithstanding allegations that the employee, upon interviewing the inmate after he had passed out and complained of amnesia, sent him back to his cell. (Sing Sing Correctional Facility, New York)

U.S. District Court
CLAIMS

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. District Court
CLAIMS

Morris v. Eversley, 282 F.Supp.2d 196 (S.D.N.Y. 2003). A former inmate brought a § 1983 alleging that she had been sexually assaulted by a correctional officer. The court granted summary judgment in favor of the defendants, finding that the inmate failed to show that the defendants had any personal involvement in the alleged deprivation of her rights. The inmate alleged that a male correctional officer entered her cell one night and sexually assaulted her, and that this was but one example of an ongoing pattern and practice at the prison. (Bayview Correctional Facility, New York)

U.S. District Court
CLAIMS

Segreti v. Giller, 259 F.Supp.2d 733 (N.D.Ill. 2003). A former inmate brought a § 1983 claim against correctional officers seeking compensatory and punitive damages, based on an alleged retaliatory transfer. The district court denied the officers' motion to dismiss. The court held that the officers' alleged conduct supported the inmate's claim for retaliatory transfer, in response to filing a grievance against a corrections officer. The court found that the inmate had a statutory liberty interest in remaining in a work-release program, which could not be terminated without due process. (Transition Center, Illinois Department of Corrections)

U.S. Appeals Court
CLAIMS

Wallin v. Norman, 317 F.3d 558 (6th Cir. 2003). A former state prisoner filed a § 1983 action against various prison officials alleging that he was denied proper medical treatment while in prison, and that the officials were deliberately indifferent to his serious medical needs. The district court denied the defendants' motion to dismiss and they appealed. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that the prisoner's allegations stated a claim against the officials for deliberate indifference. The former prisoner alleged that he suffered from medical conditions including a urinary tract infection and leg infection while he was incarcerated, and that those conditions worsened and developed into more serious conditions as a result of inadequate medical treatment provided to him. (Southern Michigan Prison)

2004

U.S. District Court
CLAIMS

Byar v. Lee, 336 F.Supp.2d 896 (W.D.Ark. 2004). A former county jail detainee filed an action against a former county sheriff, alleging violations of her constitutional rights arising out of the sheriff's promulgation of a set of detainee rules for the county jail. The district court held that the rules, which were modeled on the Ten Commandments, were excessively and impermissibly entangled with religion and constituted an endorsement or advancement of religion. The court found that a sufficient nexus existed between the requirement that the detainee read, sign, and agree to follow the rules and the imposition suffered by the detainee by having religious tenets forced upon her in the guise of secular rules of behavior. The detainee alleged that she considered it offensive to have the government direct her to obey particular religious tenets and she was fearful that she might be perceived as violating the rules and therefore be disciplined. The court denied the sheriff qualified immunity from liability, finding that he knew, or reasonably should have known, that his actions violated the Establishment Clause. The court noted that the sheriff had previously been sued about the rules and was given notice that posting the Ten Commandments in any form would violate the Establishment Clause. The court found that the use of the Ten Commandments as a model for detainee rules served no secular purpose and that the primary effect of the rules was to advance religion. (Benton County Jail, Arkansas)

U.S. District Court
CLAIMS

Chavis v. Struebel, 317 F.Supp.2d 232 (W.D.N.Y. 2004). A former state inmate filed a § 1983 action claiming that prison officials confiscated his legal materials, retaliated against him for filing a grievance and filed a false schizophrenia report. The district court granted summary judgment in favor of the officials, finding that their filing of a disciplinary report against the inmate was not retaliatory. The court also held that an official's alleged suggestion that a mental health unit assess the inmate did not constitute an "adverse action" necessary to support the inmate's First Amendment retaliation claim, absent an allegation that the inmate was transferred to a psychiatric unit, subjected to psychiatric treatment against his will, subjected to a mental health evaluation, stigmatized as having a psychiatric illness, or ridiculed by other corrections officers or inmates as the result of the official's comments. The court found that insulting, disrespectful or sarcastic comments by corrections officers are not sufficient to satisfy the adverse action requirement of a First Amendment retaliation claim. (Attica Correctional Facility, New York)

U.S. Appeals Court
CLAIMS

Davis v. Hall, 375 F.3d 703 (8th Cir. 2004). A former state inmate brought a § 1983 action against prison officials, alleging due process violations in connection with his prolonged incarceration after he was ordered released. The district court granted final judgment for the inmate and the officials appealed. The appeals court affirmed in part, and reversed and remanded in part. The appeals court held that prison officials who failed to release the inmate for 57 days after a judge ordered the release deprived him of his Fourteenth Amendment right to be free from wrongful, prolonged incarceration. (Fulton Reception and Diagnostic Center, Missouri)

U.S. Appeals Court
CLAIMS

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. District Court
SEX OFFENDER

Kritenbrink v. Crawford, 313 F.Supp.2d 1043 (D.Nev. 2004). Former and current state inmates filed § 1983 actions alleging that the state provided no adequate due process procedures for them to challenge their classification as sex offenders. The district court dismissed the action, finding that the current inmate had to exhaust his administrative remedies, and that the state did not violate the former inmate's procedural due process rights. The court found that the State of Nevada provided an adequate administrative procedure for the inmate to challenge his classification as a sex offender, where administrative regulations stated that classification decisions were grievable and that the grievance procedure had to afford a meaningful remedy. (Northern Nevada Correctional Center, and Warm Springs Correctional Center, Nevada)

U.S. Appeals Court
CLAIMS

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. District Court
CLAIMS

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)

2005

U.S. Appeals Court
CLAIMS

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. Appeals Court
CLAIMS

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
PARDON

Hirschberg v. Commodity Futures Trading, 414 F.3d 679 (7th Cir. 2005). A former commodities broker whose registration had been revoked after he was convicted of mail fraud challenged the denial of his registration by the Commodity Futures Trading Commission (CFTC) following his presidential pardon. The appeals court held that the CFTC did not violate the presidential pardon power by denying the broker's post-pardon application for registration, noting that a presidential pardon does not wipe out the lack of honesty and integrity inherent in the factual predicates that supported the broker's mail fraud conviction. (Commodities Futures Trading Commission)

U.S. District Court
CLAIMS

Smith v. Haley, 401 F.Supp.2d 1240 (M.D.Ala. 2005). A former inmate brought a § 1983 action against prison officials, stemming from the alleged denial of his requests for religious accommodations for his practice of Odinism while he was incarcerated. Odinism is an ancient pre-Christian faith whose theology is based on historic Icelandic sagas and runic mysticism. The inmate had asked officials to allow him to light a small fire or light a candle, wear a Thor's hammer necklace, and possess a small crystal. The district court granted summary judgment in favor of the officials. The court held that the inmate's right to possess a crystal as part of his practice of Odinism was not clearly established by any law at the time of the actions at issue, and therefore the officials were entitled to qualified immunity from liability. The court noted that even if the refusal to allow the crystal violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) or the First Amendment, the contours of the inmate's rights were not sufficiently clear at the time. (Limestone Correctional facility, Alabama)

U.S. District Court
CLAIMS

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)

2006

U.S. District Court
CLAIMS

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
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. Appeals Court
CLAIMS

Feeney v. Correctional Medical Services, Inc., 464 F.3d 158 (1st Cir. 2006). A former inmate brought a § 1983 action against state correctional health care professionals, alleging they acted with deliberate indifference to his serious medical needs. The district court granted summary judgment in favor of the professionals and the former inmate appealed. The appeals court affirmed, finding that the health care professionals were not deliberately indifferent to the former inmate's serious medical needs. The former inmate suffered from plantar faciitis, and alleged that there was a lengthy delay in providing him with orthopedic footwear after it was first prescribed.

The court noted that the inmate was examined many times after he first reported his symptoms, numerous diagnostic tests were performed on the inmate, outside specialists-- including a podiatrist, neurologist, neurosurgeon, and physical therapist-- were consulted, the inmate was given other treatments for his symptoms, and that uncertainty existed about the source of his pain prompting causes other than plantar faciitis to be investigated. (Correctional Medical Services, Inc., Old County Correctional Center, Massachusetts)

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

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
CLAIMS

Moeller v. Bradford County, 444 F.Supp.2d 316 (M.D.Pa. 2006). Taxpayers and a former inmate of a county prison sued the county, the U.S. Department of Justice, and a private organization providing vocational rehabilitation services to inmates, claiming that funding of the group, which proselytized for the Christian religion, was a violation of Establishment Clause. The district court dismissed the case in part, and the county moved for judgment on the pleadings. The court held that it had jurisdiction over claims that payments to religious organizations violated the state constitution and that the plaintiffs sufficiently stated a claim that the county violated the Establishment Clause, despite the claim that funding was race neutral, where there was no other vocational program funded in the county prison system. According to the court, the county was coercing inmates into involvement with Christianity, as the only way to get valuable rehabilitation benefits. The court also found that a claim was stated that the county engaged in employment discrimination based on religion. The court held that the taxpayers had standing to bring suit when Congressional appropriations were used to finance the organization's efforts to proselytize for the Christian religion, undertaken concurrently with vocational training. The court described the program, operated by the Firm Foundation as follows: "The program not only provides vocational training, but spends a significant amount of time and resources on religious discussions, religious lectures, and prayer. The Firm Foundation describes its program as a prison ministry. It requires its staff to adhere to Christian beliefs and to share these beliefs when the opportunity arises. The Firm Foundation routinely proselytizes to the inmates in the vocational training program, and does not make an effort to segregate government funds for the purely secular purpose of vocational training." Funding for the program was derived from a federal grant under the Workforce Investment Act from the United States Department of Labor. The Firm Foundation also received funds from Bradford County and the Pennsylvania Commission on Crime and Delinquency. (Bradford County Correctional Facility, Pennsylvania)

U.S. District Court
COST OF
CONFINEMENT

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. 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

rationality 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
CLAIMS

Williams v. District of Columbia, 439 F.Supp.2d 34 (D.D.C. 2006). A former inmate filed a pro se § 1983 action seeking damages for alleged exposure to second-hand tobacco smoke while he was confined in jail. The district court denied the defendants' motion for summary judgment. The court held that the former inmate's allegations that while he was in jail he was subjected to an intolerable level of environmental tobacco smoke (ETS), that such exposure caused health problems at the time he was confined and posed a risk to his future health, and that the individual defendants were deliberately indifferent to his condition, if true, were sufficient to establish an Eighth Amendment violation. The court found that genuine issues of fact existed, precluding summary judgment. The inmate alleged that inmates and staff in his housing unit smoked tobacco, the unit did not have adequate ventilation or windows or doors that could be opened to remove the tobacco smoke, and his cellmate smoked five packs of cigarettes a day and kept a homemade toilet paper wick burning at all times for the purpose of lighting cigarettes. The inmate said that he experienced nausea and nosebleeds, and he filed a number of grievances. (District of Columbia Department of Corrections, Central Detention Facility)

2007

U.S. District Court
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. Appeals Court
CLAIMS

Dible v. Scholl, 506 F.3d 1106 (8th Cir. 2007). A former prisoner brought a § 1983 action against state corrections officials, alleging that he was denied due process when he was issued inadequate disciplinary notice. The notice stated that confidential information indicated that the prisoner had "threatened and choked a citizen of the State of Iowa." The district court denied the officials' motion for summary judgment and the officials appealed. The court held that the law was clearly established in 2006, for the purposes of qualified immunity, that the disciplinary notice did not comport with due process. (Residential Treatment Facility, Sioux City, Iowa)

U.S. District Court
SEX OFFENDERS

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
CLAIMS

Limone v. U.S., 497 F.Supp.2d 143 (D.Mass. 2007). Two former prisoners whose convictions arising out of a murder were overturned, and representatives of two co-defendants who died in prison, sued the United States and individual federal and state law enforcement officers under the Federal Tort Claims Act (FTCA), *Bivens*, § 1983, and state law, alleging their complicity in framing the prisoners. Following a bench trial, the district court entered judgment for the plaintiffs. The court held that: (1) FBI agents engaged in malicious prosecution; (2) agents engaged in a coercive conspiracy; (3) agents intentionally inflicted emotional distress on the prisoners; (4) agents were negligent in their treatment of prisoners; (5) FBI was liable for negligent supervision of the agents activities; (6) damages for wrongful imprisonment would be set at the rate of \$1 million per year, adjusted for unrelated concurrent sentences; (7) loss of consortium damages would be awarded to wives and children of prisoners; and (8) damages would be awarded for intentional infliction of emotional distress. (Massachusetts)

U.S. District Court
CLAIMS

Turner v. Correctional Medical Services, 494 F.Supp.2d 281 (D.Del. 2007). A former prisoner brought a § 1983 action against a state, prison officials, and a medical service company, alleging inadequate medical care for hepatitis while he was incarcerated. After the district court entered partial summary judgment in the prisoner's favor, the company moved to alter or amend the judgment. The district court denied the motion. The court held that expert testimony regarding the need to train the inmate suffering from hepatitis C to rotate the injection site for his interferon shots was not required to establish the medical service company's deliberate indifference to the inmate's serious medical needs, where the medical record was replete with references to the inmate self-injecting at the same site and an infection occurring at the injection site. (Delaware Correctional Center)

- U.S. District Court
CLAIMS *Campbell v. Cornell Corrections of Rhode Island, Inc.*, 564 F.Supp.2d 99 (D.R.I. 2008). A former inmate brought a § 1983 action against a privately-owned correction facility and corrections employees, alleging violations of his rights under the First and Eighth Amendments. The district court denied summary judgment in part. The court held that failure to serve the inmate a vegetarian diet consistent with his religious beliefs did not constitute an Eighth Amendment violation, absent an allegation that the prison failed to provide the inmate with food that was adequate in quantity, nutritional value or in any other respect. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison's refusal to provide the inmate a vegetarian diet consistent with his religious beliefs was reasonably related to legitimate penological interests. (Wyatt Detention Facility, Rhode Island)
- U.S. Appeals Court
CLAIMS *Domka v. Portage County, Wis.*, 523 F.3d 776 (7th Cir. 2008). A former county jail inmate brought a § 1983 action against a county, alleging that revocation of his work-release and home-detention privileges, granted through a plea bargain in his prosecution for his third offense of driving under the influence (DUI), had constituted deprivation of due process. The district court granted summary judgment for the county, and the inmate appealed. The appeals court affirmed. The court held that the plea agreement did not give rise to protected liberty interests in home detention and work-release, and that the inmate had knowingly and intelligently waived any due process rights he may have had in the home-detention program by signing an agreement as to the program's terms. The agreement unambiguously stated that the inmate could, and would, be removed from the program without notice if, among other reasons, he tested positive for alcohol use. According to the court, the waiver was knowing and intelligent, regardless of the prisoner's reliance on an allegedly false oral promise that any positive test would be verified by a personally administered retest, since the written agreement conditioned removal on a positive initial test only, not on the prisoner's actually consuming alcohol. The court noted that the inmate received what he bargained for, the opportunity to serve a portion of his time under home detention with work release. (Portage County's Home Detention Program, Wisconsin)
- U.S. Appeals Court
CLAIMS *Greene v. Solano County Jail*, 513 F.3d 982 (9th Cir. 2008). A former prisoner sued a county jail official asserting statutory and constitutional challenges to the county jail's policy of prohibiting maximum security prisoners from participating in group worship. The district court entered summary judgment for the official and the prisoner appealed. The appeals court reversed in part, vacated in part, and remanded. The court held that the religious exercise at issue in the prisoner's suit under the Religious Land Use and Institutionalized Persons Act (RLUIPA) was engaging in group worship, not practicing his religion as a whole. Therefore, even if the ban on group worship did not place a substantial burden on the prisoner's practice of Christianity, such fact would not ensure that ban was in compliance with RLUIPA. According to the court, the jail's policy of prohibiting the maximum security prisoner from attending group religious worship services substantially burdened the prisoner's ability to exercise his religion as required for the ban to violate RLUIPA. The court found that summary judgment was precluded by genuine issues of material fact as to whether the jail's policy was the least restrictive means of maintaining security. (Solano County Jail, Claybank Facility, California)
- U.S. Appeals Court
CLAIMS *Hayes v. Snyder*, 546 F.3d 516 (7th Cir. 2008). A former prisoner brought an action against prison officials, alleging the officials were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the prisoner's testicular growths and cysts, painful urination and excruciating pain constituted a serious medical condition and a reasonable jury could infer that the prison physician was deliberately indifferent to these needs. The court held that the physician was not entitled to qualified immunity. The court noted that the prison physician never prescribed prescription-strength pain killers, stopped providing even minimal pain treatment to the prisoner, and rejected the prisoner's request to see a specialist. The court found that non-medical prison officials were not deliberately indifferent to the prisoner's serious medical need in violation of the Eighth Amendment, where the officials responded readily and promptly to each of the prisoner's letters and grievances and were entitled to defer to the professional judgment of medical officials on questions of the prisoner's medical care. (Hill Correctional Center, Illinois)
- U.S. 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. The court also noted that there was no evidence that the state of Tennessee's re-enfranchisement scheme for convicted felons had traditionally been regarded as punitive, rather than civil, so as to violate the federal or Tennessee Ex Post Facto Clause. (Tennessee)
- U.S. District Court
CLAIMS
RELEASE *Johnson v. U.S.*, 590 F.Supp.2d 101 (D.D.C. 2008). A former inmate brought a civil rights action against the federal Bureau of Prisons and others, alleging violations of his constitutional rights. The district court granted the defendants' motion to dismiss. The court held that absent a showing that the former inmate's conviction or sentence had been invalidated, or that his parole violator term had been invalidated, the former inmate could not recover damages on his civil rights claims for time spent in custody beyond the date on which he should have been released

on parole. The court held that the former inmate's denial of placement on parole in a community corrections program due to an insufficient number of beds did not equate to an "atypical and significant hardship" worthy of due process protection. (Federal Bureau of Prisons)

U.S. Appeals Court
CLAIMS

Lee v. Young, 533 F.3d 505 (7th Cir. 2008). A former state prisoner brought a pro se § 1983 action against prison officials, alleging that the officials exhibited deliberate indifference to his serious medical needs, in connection with the prisoner's exposure to secondhand smoke that allegedly triggered his asthma. The district court granted summary judgment in favor of the officials, and the prisoner appealed. The appeals court affirmed, finding that the officials were not deliberately indifferent. According to the court, although the prisoner complained to medical staff, the officials did not ignore the medical staff's advice, since no doctor ever recommended that the prisoner be transferred to avoid exposure to the secondhand smoke. The court noted that medical professionals concluded that the prisoner's asthma was controlled. When the prisoner requested a non-smoking cell he was given one, his cellmate was issued a disciplinary ticket when he smoked in their non-smoking cell, and the ventilation system was repaired when the prisoner complained. (Shawnee Correctional Center, Illinois)

U.S. District Court
CLAIMS

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. Appeals Court
CLAIMS

Powell v. Barrett, 541 F.3d 1298 (11th Cir. 2008). Former detainees at a county jail initiated a class action complaining about being subjected to "blanket strip searches" upon entering and/or returning to the jail, as well as their continued detention past their scheduled release dates. The county and city defendants filed motions to dismiss. The district court granted the county defendants' motion in part and denied it in part, and denied the city defendants' motion. The defendants appealed. The appeals court affirmed in part and remanded. On rehearing en banc, the appeals court held that the practice of conducting full body visual strip searches on all jail detainees being booked into the general population for the first time did not violate the Fourth Amendment, regardless of whether there was any reasonable suspicion to believe that the inmates were concealing contraband, and regardless of whether the inmates were arrested for minor offenses or misdemeanors. The plaintiffs were 11 former detainees at a Georgia jail, all of whom were strip searched upon entering or re-entering the general population. The court divided the plaintiffs into three groups, which overlapped to some extent. The court addressed the detainees in the "the Arrestee Strip Search Class" which consists of the eight plaintiffs who were strip searched as part of the point-of-entry booking process before they were placed into the general jail population for the first time. (Fulton County Jail, Georgia)

U.S. District Court
CLAIMS

Volpe v. U.S., 543 F.Supp.2d 113 (D.Mass. 2008). A former detainee challenged the administrative forfeiture of his money on grounds that the government failed to provide him with any notice of the proceedings and lacked probable cause. The Drug Enforcement Agency (DEA) had seized approximately \$68,000 when the detainee was admitted to confinement. The government moved to dismiss and the detainee moved for summary judgment. The district court held that the government failed to take reasonable steps to discover the former detainee's actual address before the forfeiture, and the use of a publication notice of the proceedings did not comply with due process. (Plainville, Massachusetts)

U.S. District Court
CLAIMS

Williams v. District of Columbia, 530 F.Supp.2d 119 (D.D.C. 2008). A former inmate brought a § 1983 action against District of Columbia and corrections officials seeking damages related to his alleged exposure to second-hand smoke while he was in jail. Defendants moved for summary judgment. The court granted summary judgment for the defendants. The court held that a potential future injury to the former inmate arising from his alleged exposure to environmental tobacco smoke (ETS) while he was in jail was too remote and speculative to support standing in the inmate's § 1983 action. The court noted that the expert report submitted by the inmate indicating a increased risk of heart disease and lung cancer for the jail population exposed to ETS during the inmate's period of incarceration did not indicate a probability of harm to the inmate. (District of Columbia Department of Corrections Central Detention Facility)

2009

U.S. District Court
CLAIMS

Bowdry v. Ochalla, 605 F.Supp.2d 1009 (N.D.Ill. 2009). A former state prison inmate brought a § 1983 action against attorneys employed by a county public defender's office, alleging that the attorneys' respective failure to notice and correct a mittimus error had resulted in the inmate's incarceration for an extra three months, asserting violations of due process, equal protection, and the Eighth Amendment's prohibition against cruel and unusual punishment. The district court dismissed the action. The court held that the attorneys had not acted under the color of state law in failing to correct the mittimus error, where the review of mittimus fell within the scope of a lawyer's traditional functions, contrary to the defendant's contention that it was "essentially administrative." (Cook County Public Defenders, Illinois)

U.S. District Court
CLAIMS

Brickell v. Clinton County Prison Bd., 658 F.Supp.2d 621 (M.D.Pa. 2009). A former inmate filed a § 1983 action against a county, county prison board, and various county officials to recover for injuries she sustained while working in a jail kitchen. The district court dismissed the case in part, and denied dismissal in part. The court held

that the sheriff was not subject to supervisory liability under § 1983 for alleged failure to obtain adequate medical treatment for the inmate after she suffered burns while working in a jail kitchen, where the sheriff did not participate in or have knowledge of any violations of the inmate's rights, did not direct jail employees to commit the violations, and did not acquiesce in the employees' violations. The court found that the inmate's allegation that a county prison board failed to adopt, and the jail's warden and deputy wardens failed to implement, policies regarding treatment of severe burns and general medical treatment was sufficient to state a claim against the board and officials under § 1983 for violation of her Eighth Amendment right to adequate medical care, where the inmate claimed that there was a total absence of policy concerning medical treatment for severe burns or general medical care when prison facilities were inadequate. According to the court, the county's alleged negligence in the training of kitchen staff at the county jail was not sufficiently shocking to support the inmate's § 1983 due process claim pursuant to a state-created danger theory based on the inmate's allegation that she suffered severe burns while transferring a hot container from a stove to a top shelf of upright warmers, even if the county officials knew or should have known that the inmate was physically unable to place the container on the top shelf in a safe fashion. (Clinton Co. Prison Board, Clinton Co. Correctional Facility, Pennsylvania)

U.S. Appeals Court
RELEASE
SEX OFFENDERS

Carver v. Lehman, 558 F.3d 869 (9th Cir. 2009). A former inmate of the Washington Department of Corrections (DOC), who had been sentenced to a term of imprisonment plus a term of community custody based on his status as a sex offender, brought a § 1983 action against the secretary of the DOC. The former inmate alleged that denial of his application for early release into community custody constituted a violation of his due process rights. The district court granted summary judgment for the DOC secretary, and the former inmate appealed. The appeals court affirmed. The court held that state statutes did not create a liberty interest in early release into community custody for sex offenders who earned a good-time early release date. Rather, according to the court, the statutes only made such offenders eligible for discretionary transfer at an earlier date, if appropriate. (Washington State Department of Corrections)

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

Chao v. Ballista, 630 F.Supp.2d 170 (D.Mass. 2009). A former state prisoner brought a § 1983 action against officials at the Massachusetts Department of Correction (DOC), alleging that the officials failed to properly investigate and protect her from sexual abuse by a prison guard. The officials moved to dismiss the complaint on a number of grounds. The district court held that the former prisoner was not subject to the Prison Litigation Reform Act's (PLRA) exhaustion requirement. The court found that the former prisoner's allegations in her amended complaint that, over the course of a year, she and the prison guard engaged in 50 to 100 sexual encounters in a prison facility without detection, that the guard had a sexual relationship with at least one other female inmate, that sexual encounters continued even after the guard was reassigned to different duties, and that a prison nurse placed the prisoner on oral contraceptive pills during the relevant time period, sufficiently stated a § 1983 claim against prison officials. The district court held that DOC officials were not entitled to qualified immunity, given the extent of the abuse, the numerous warning signs alleged, and the available sources of information. (South Middlesex Correctional Center, Massachusetts)

U.S. District Court
CLAIMS

Cusamano v. Sobek, 604 F.Supp.2d 416 (N.D.N.Y. 2009). A former state prisoner brought a pro se action against department of corrections employees, alleging violation of his First, Eighth and Fourteenth Amendment rights as well as the New York Constitution. The district court granted summary judgment for the defendants in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact regarding whether a corrections officer was present during, and participated in, the alleged assault of the prisoner. The court noted that an officer's failure to intervene during another officer's use of excessive force can itself constitute excessive force. The court also held that summary judgment was precluded by a genuine issue of material fact regarding whether excessive force was used against the prisoner. The court found that there was no evidence that a misbehavior report that a corrections officer filed against the prisoner was a false report intended to cover up the use of excessive force, as required for the prisoner's false misbehavior report claim against the officer. The court also found no causal connection between the state prisoner's grievance and the issuance of the misbehavior report, as required for the state prisoner's retaliation claim against a corrections officer. The court held that the denial of access to toilet paper and soap during the prisoner's confinement in a special housing unit did not constitute an unconstitutional condition of confinement, as required for the prisoner's inadequate prison conditions claim against corrections officers under the Eighth Amendment. The court noted that the deprivation of toilet paper and soap was not continuous, there was no evidence that the prisoner was deprived of any other toiletry items, and there was no evidence that the prisoner requested toilet paper during medical visits. 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. Appeals Court
CLAIMS
RELEASE

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
CLAIMS

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
CLAIMS

Kantamanto v. King, 651 F.Supp.2d 313 (E.D.Pa. 2009). A former prisoner brought an action against a prison commissioner, deputy warden, and correctional officer, alleging that he was terminated from his prison law library job in retaliation for his publication of an article critical of prison conditions, in violation of his speech and due process rights. The court granted summary judgment for the defendants in part, and denied in part. The court held that the alleged termination by the correctional officer of the prisoner from his law library job, if proven, was an adverse action, but the prisoner did not have a protected liberty or property interest in his job arising directly from the Due Process Clause. The court held that summary judgment for the defendants was precluded by genuine issues of material fact as to: (1) whether any termination of the prisoner from his law library job by a correctional officer was in retaliation for the prisoner's exercise of his free speech rights, through publishing an article about prison conditions in a newspaper; and (2) whether the alleged reason for terminating the prisoner from his law library job, i.e., that his "close custody" status did not permit him to work in the law library, was a pretext for terminating him for exercising his speech rights. The court also held that a prison policy outlining the job termination and reassignment process did not create a liberty interest in such a job. (Curran-Fromhold Correctional Facility, Philadelphia, Pennsylvania)

U.S. Appeals Court
CLAIMS

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
CLAIMS

Parlin v. Cumberland County, 659 F.Supp.2d 201 (D.Me. 2009). A female former county jail inmate brought an action against jail officers, a county, and a sheriff, under § 1983 and Maine law, alleging deliberate indifference to her serious medical needs, negligence, and excessive force. The district court granted summary judgment for the defendants in part and denied in part. The court held that: (1) the officers were not deliberately indifferent to a serious medical need; (2) an officer who fell on the inmate did not use excessive force; (3) the county was not liable for deprivation of medical care; and (4) the county was not liable for failure to train. The court held that the officers were not entitled to absolute immunity from excessive force claims where a genuine issue of material fact existed as to whether the officers used excessive force in transferring the jail inmate between cells. According to the court, there was no evidence that jail officers were subjectively aware of the jail inmate's serious medical condition, where the inmate made no mention of her shoulder injury to the officers other than crying out "my shoulder" after she had fallen. (Cumberland County Jail, Maine)

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

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. The court held that county prison facilities to which the paraplegic and partially-paralyzed pretrial detainees claimed to have been denied access--showers, toilets, and sinks--were "services" and "programs" within the meaning of Title II of ADA, which forbade discrimination against persons with disabilities in the area of public services, programs, and activities. The court found that summary judgment was precluded by genuine issues of material fact as to whether the paraplegic and partially-paralyzed pretrial detainees were intentionally discriminated against, and as to whether modifications to county prison facilities requested by the detainees were reasonable. The court found no evidence that the detainees were excluded from electronic monitoring or drug rehabilitation programs by the county department of corrections, as would support their Americans with Disabilities Act (ADA) claim. (Cook County Department of Corrections, Illinois)

U.S. District Court
CLAIMS

Smith v. District of Columbia, 674 F.Supp.2d 209 (D.D.C. 2009). The parent of a deceased inmate brought an action against the District of Columbia, stemming from the inmate's death following incarceration. Prior to being incarcerated, the inmate was partially paralyzed and confined to a wheelchair as a result of gunshot wounds. The parent alleged that while confined, these injuries prompted the inmate to make repeated "requests for medical care treatment, and attention including, but not limited to, providing medication when ordered by his physicians, providing prompt and adequate dressing changes to prevent the formation and growth of decubitus sores, [and] providing sanitary cell conditions." The parent alleged that the District failed to "provide a healthcare system that included prompt, proper, adequate, and reasonable medical care and treatment to all persons incarcerated under their care, custody, and supervision." The inmate died eight months after his release from the facility. The district court granted the District's motion for dismissal. The court held that the parent failed to assert a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. (Correctional Treatment Facility, District of Columbia)

U.S. District Court
CLAIMS

Teas v. Ferguson, 608 F.Supp.2d 1070 (W.D.Ark. 2009). A former inmate brought a pro se civil rights action pursuant to § 1983 against detention center staff alleging that while he was an inmate of the detention center, his constitutional rights against excessive force and retaliation were violated. The district court denied the defendant's motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact as to whether excessive force was used against the prisoner, while still a pretrial detainee. (Benton County Detention Center, Arkansas)

U.S. District Court
CLAIMS
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 as to: (1) whether corrections officers and prison officials knew or should have known that an officer would apply excessive force to the inmate by shocking him when he was restrained and whether they could have prevented the officer's excessive use of force; (2) whether the inmates exhausted administrative remedies by filing grievances regarding use of a restraint chair, lack of mattresses, inability to shower, cell conditions, and issues with mail; (3) whether the use of mechanical restraints against the inmates constituted wanton infliction of pain in violation of the Eighth Amendment; (4) whether an inmate complied with officials when extracted from a cell, rendering the use of oleoresin capsicum spray excessive and unjustified; (5) whether cell conditions posed a substantial risk of harm to inmates and whether corrections officers and prison officials were deliberately indifferent to that risk; and (6) whether the warden of the county jail was aware of and condoned the use of excessive force against inmates at jail. 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
CLAIMS

Brawley v. Washington, 712 F.Supp.2d 1208 (W.D.Wash. 2010). A female former inmate brought a § 1983 action against the Washington State Department of Corrections and various officials, seeking relief from violations of her constitutional rights that she alleged occurred during the birth of her first child. The Department filed a motion for summary judgment, which the district court granted in part and denied in part. The court held that the female inmate, who was shackled to a hospital bed while giving birth, showed, from an objective standpoint, that she had a serious medical need and was exposed to an unnecessary risk of harm for the purposes of her § 1983 Eighth Amendment claim. The court held that summary judgment was precluded by material issues of fact as to whether officers were deliberately indifferent to the risks of harm to the inmate and her serious medical needs when they shackled her to a hospital bed. According to the court, the inmate showed that shackling inmates while they were in labor was clearly established as a violation of the Eighth Amendment's prohibition against cruel and unusual punishment, thereby barring the Department of Corrections' qualified immunity defense. (Washington State Corrections Center for Women)

U.S. Appeals Court
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. 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. District Court
CLAIMS

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

U.S. District Court
CLAIMS

Lymon v. Aramark Corp., 728 F.Supp.2d 1222 (D.N.M. 2010). A former state prisoner brought an action against the New Mexico Department of Corrections (NMDOC), its secretary, prison officers, the private company that managed a prison kitchen, and two of the company's employees, alleging various constitutional claims and negligence under the New Mexico Tort Claims Act (NMTCA). The prisoner had sustained injuries from work he was required to perform in a kitchen, and he made allegations about the injuries and his subsequent treatment. The state defendants moved to dismiss. The district court granted the motion. The court held that no New Mexico Department of Corrections (NMDOC) policy or regulation made any provision for the state prisoner's liberty interest in a labor assignment or otherwise provided the prisoner with protection from corrections officers ordering him to perform work in a prison kitchen or protection from orders in contravention of a medical order. The court ruled that the prisoner's § 1983 procedural due process claim arising from injuries he allegedly sustained while performing kitchen work was precluded. According to the court, corrections officers' alleged misclassification and denial of a grievance process did not rise to the degree of outrageousness, or the magnitude of potential or actual harm, that was truly conscience-shocking, precluding the state prisoner's § 1983 substantive due process claims. The court noted that the state prisoner made no allegation that he contracted any disease while working in the prison kitchen, but only that he suffered a shoulder injury as the result of a heavy-lifting component of his work, thus precluding his § 1983 unconstitutional conditions claim against the New Mexico Department of Corrections (NMDOC) and its secretary. The court held that the prisoner did not personally suffer any injury as a result of a corrections officer's classification of prisoners for work duty, purportedly assigning inmates with known transmissible diseases to kitchen work, precluding the prisoner's claim for an alleged violation of federal public health policy. (Aramark Corporation, Central New Mexico Correctional Facility)

U.S. Appeals Court
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)

U.S. Appeals Court
CLAIMS

Williams v. Jackson, 600 F.3d 1007 (8th Cir. 2010). A former inmate brought Eighth Amendment claims against a prison maintenance supervisor and three correction officers alleging that they willfully and maliciously exposed him to ultraviolet radiation resulting in physical injury. The district court denied the defendants' motion for summary judgment, and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that correction officers were not entitled to qualified immunity from the inmate's claims alleging that officers used excessive force and acted with deliberate indifference, in violation of the Eighth Amendment, in removing the shield used to protect cell occupants from exposure to ultraviolet radiation from a germicidal ultraviolet radiation lamp used for the treatment of tuberculosis. The court found that officers acted in retaliation for a comment made by another inmate during a "shake down" of the cell, and that officers ignored demands to replace the shield or deactivate the light, since reasonable officers were on sufficient notice that they may not purposefully expose inmates to potentially harmful radiation in the complete absence of a penological purpose. The court found that the inmate's allegation that the prison's maintenance supervisor received notice that correction officers had removed the protective shield but failed to take timely action to replace the shield alleged was nothing more than simple negligence, and thus was insufficient to state an Eighth Amendment violation. (East Arkansas Regional Unit, Arkansas Department of Corrections)

2011

- U.S. District Court
CLAIMS *Francis v. Carroll*, 773 F.Supp.2d 483 (D.Del. 2011). A former inmate, proceeding pro se and in forma pauperis, brought a § 1983 action against a former warden and other Department of Correction administrators, alleging violations of the Eighth and Fourteenth Amendments. The defendants filed a motion for summary judgment and the district court granted the motion. The court held that denial of dental floss by the prison's medical provider to the inmate was not deliberate indifference to his dental needs by prison administrators, as would violate the Eighth Amendment, where the administrators were entitled to rely upon the provider to care for the inmate's dental needs, and the prison permitted dental loops that provided the same hygiene function as floss. According to the court, denial of dental floss to the inmate did not violate Fourteenth Amendment equal protection, where the inmate was treated no differently than other inmates, and the denial was based upon security concerns. (James T. Vaughn Correctional Center, Delaware)
- U.S. Appeals Court
CLAIMS *Hunter v. County of Sacramento*, 652 F.3d 1225 (9th Cir. 2011). Former jail inmates brought a § 1983 action against a county, alleging that they were subjected to excessive force while in custody at the county jail. After a jury verdict in favor of the county, the district court denied the inmates' motion for a new trial and the inmates appealed. The appeals court reversed and remanded, ordering a new trial due to the district court's refusal to submit the inmates' proposed instructions to the jury. The court noted that the inmates' proposed instructions explicitly stating that the county's use of an unconstitutional practice or custom could be proven through evidence that incidents of excessive force were not investigated and their perpetrators were not disciplined. (Sacramento County Main Jail, California)
- U.S. Appeals Court
VOTING *Pittsburgh League of Young Voters Educ. Fund v. Port Authority of Allegheny County*, 653 F.3d 290 (3rd Cir. 2011). Public-interest organizations filed a civil rights action alleging that a port authority's rejection of advertisements on buses informing ex-prisoners that they had the right to vote, and encouraging them to exercise the right, was the result of viewpoint discrimination. The district court granted judgment to the plaintiffs after a bench trial. The defendant appealed. The appeals court affirmed. The appeals court held that the district court permissibly found that the port authority did not reject the advertisement on the grounds that it was "political", that the authority's rejection of the advertisement was the result of viewpoint discrimination, and evidence that the port authority had accepted several noncommercial advertisements, but rejected the advertisement at issue, strongly suggested viewpoint discrimination. (ACLU, Pittsburgh League of Young Voters Education Fund, Port Authority of Allegheny County, Pennsylvania)
- ## 2012
- U.S. Appeals Court
CLAIMS *Alvarez v. Hill*, 667 F.3d 1061 (9th Cir. 2012). A former inmate in the Oregon Department of Corrections (ODOC) sued prison officials, alleging that ODOC employees substantially burdened the practice of his religion in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed. The court held that Oregon's sovereign immunity barred the former inmate's Religious Land Use and Institutionalized Persons Act (RLUIPA) claims for money damages against corrections officials sued in their official capacity, where, for sovereign-immunity purposes, the official capacity claims were treated as claims against the state. The court found that the former inmate lacked a legally cognizable interest in the outcome of his claims for declaratory and injunctive relief, despite his contentions that his claims were capable of repetition, yet would continue to evade review, and that his claims challenged ongoing prison policies to which other inmates would remain subject. According to the court, there was no indication that the inmate, who had completed his sentence and his post-incarceration supervision, would again be subjected to the challenged prison policies, and current inmates could bring their own RLUIPA claims challenging the policies at issue. The court noted that an Inmate's release from prison while his claims are pending generally will moot any claims for injunctive relief relating to the prison's policies unless the suit has been certified as a class action. (Oregon Department of Corrections)
- U.S. District Court
CLAIMS *Hampton v. Sabie*, 891 F.Supp.2d 1014 (N.D.Ill. 2012). A former inmate at a juvenile correctional facility brought a § 1983 action against a correctional officer and the facility superintendent, alleging that the officer sexually assaulted him and that the superintendent was deliberately indifferent to the inmate's constitutional rights by failing to protect him from the assault. The superintendent moved to dismiss. The district court granted the motion. The court held that the inmate's § 1983 claim was governed by the state's general two-year limitations period for personal injury claims, rather than the state's six-year statute applicable to sexual assaults against a child. (Ill. Youth Center)
- U.S. Appeals Court
CLAIMS
RELEASE *Marlowe v. Fabian*, 676 F.3d 743 (8th Cir. 2012). A former state prisoner filed a § 1983 action against two Department of Corrections (DOC) officials for his allegedly unconstitutional imprisonment 375 days beyond the date on which he became eligible for supervised release, purportedly violating his Fourth, Fifth, Eighth, and Fourteenth Amendment rights. The district court granted the officials summary judgment. The former prisoner appealed. The appeals court affirmed. The appeals court held that a state court of appeals' decision, remanding to the trial court the petitioner's habeas claim seeking immediate release from state prison, was not "favorable termination," thus barring his § 1983 claim, since the remand decision did not reverse, expunge, invalidate, or impugn his incarceration by grant of writ of habeas corpus, but rather directed the Department of Corrections (DOC) to consider restructuring his release plan and to seek to develop a plan that could lead to his release from prison by satisfying all conditions of supervised release. (Minnesota Department of Corrections)
- U.S. District Court
RELEASE *Rogers v. District of Columbia*, 880 F.Supp.2d 163 (D.D.C. 2012). A former prisoner brought an action against the District of Columbia, alleging he was over-detained and asserting claims for negligent training and supervision. The district moved for summary judgment. The district court granted the motion in part and denied in part. The

court held that summary judgment was precluded by a genuine issue of material fact as to when the prisoner was to be released. The district court began its opinion as follows: “Our saga begins with the tale of plaintiff’s numerous arrests. Plaintiff was arrested on four different charges in 2007: two felony charges for violating the Bail Reform Act, one felony charge for Possession with Intent to Distribute a Controlled Substance and one misdemeanor charge for carrying an open can of alcohol without a permit.” During the prisoner’s time in jail he was sentenced for all of the remaining charges. The prisoner claimed he was over-detained by approximately two months, and that this was the direct result of the D.C. Jail’s negligent training and supervision of its employees with regard to calculating jail credits. (District of Columbia Jail)

U.S. Appeals Court
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
CLAIMS
RELEASE

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. District Court
RELEASE

Ward v. Brown, 891 F.Supp.2d 1149 (E.D.Cal. 2012). A former prisoner brought a § 1983 action against a state prison, the state’s department of corrections, and prison officials, alleging violation of various constitutional rights, negligence, false imprisonment, and intentional and negligent infliction of emotional distress. Following the grant of the defendants’ motions to dismiss the federal claims, and denial of the defendants’ motion to dismiss the state claims, 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: (1) a material fact issue as to whether a prison official was deliberately indifferent to the prisoner’s right to be free from state custody; (2) material factual disputes as to whether the prison official properly retained the prisoner’s release date; (3) a material dispute of fact as to whether the department of corrections was put on notice of the prison official’s alleged miscalculation of the prisoner’s release date; and (4) material disputes of fact as to whether the department of corrections falsely imprisoned prisoner. The inmate challenged the defendants’ alleged refusal to correct his release date from a state prison, causing him to be over-incarcerated in a federal prison, in violation of his constitutional rights. (California Department of Corrections and Rehabilitation)

U.S. Appeals Court
SEX OFFENDERS

Wilson v. Flaherty, 689 F.3d 332 (4th Cir. 2012). An ex-convict petitioned for a writ of habeas corpus to challenge his state rape conviction after he had fully served his sentence, alleging that the sex offender registration requirements of Virginia and Texas law imposed sufficiently substantial restraints on his liberty so as to amount to custody. The district court dismissed the petition for lack of subject matter jurisdiction, but granted a certificate of appeal (COA). The petitioner appealed. The appeals court affirmed, finding that sex offender registration requirements did not place a sex offender in custody for the purposes of federal habeas jurisdiction, since they did not constitute physical restraints. According to the court, the requirements did not disincentivize moving by making it more onerous for offender to live in other places because registration and notification requirements were the same from state to state, and the particularized collateral consequences stemming from the way that states and individuals have reacted to persons who have been convicted of sex offenses were same as the collateral consequences faced by other persons convicted of a felony. (Virginia)

2013

U.S. District Court
CLAIMS

Canales v. Gatzunis, 979 F.Supp.2d 164 (D.Mass. 2013). A former county jail inmate brought an action in state court against a county sheriff’s department, the sheriff, the jail superintendent, a state public safety commissioner, and others, alleging the defendants subjected him to reckless, negligent, and cruel medical treatment. Some defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court found that because the county sheriff’s department and other county defendants voluntarily removed to inmate’s action to federal court, the defendants did not enjoy Eleventh Amendment immunity against any Massachusetts Tort Claims Act (MTC) claims they would be subject to in state court as a result of waiver.

The court held that the former jail inmate’s allegations that the county defendants had a “disorganized medical program” at the jail and failed to maintain a “quality assurance program,” and that the jail failed “to maintain

adequate and accurate medical records,” insufficiently pled that the jail superintendent was personally involved in misinforming the inmate that he had HIV and mistakenly administering another prisoner’s HIV medication to the inmate, as would subject the superintendent to supervisory liability for his subordinates’ alleged Eighth Amendment violations under § 1983. According to the court, the inmate’s allegations that the “defendants” told the inmate that he had HIV and administered HIV medication to him, even though he did not have HIV, did not sufficiently state that the county jail superintendent was personally involved with the inmate’s medical treatment or otherwise took any action with respect to the inmate, as would support the inmate’s intentional infliction of emotional distress claim against the superintendent, in his individual capacity, under Massachusetts law. (Suffolk County House of Correction, Massachusetts)

U.S. Appeals Court
CLAIMS
RELEASE

Engebretson v. Mahoney, 724 F.3d 1034 (9th Cir. 2013). A former state inmate brought a pro se § 1983 action against a state and prison officials, alleging, among other things, that the defendants unconstitutionally restrained his liberty during an illegal term of probation. The district court granted the defendants’ motions to dismiss, and the former inmate appealed. The appeals court affirmed. The court held that the former inmate’s allegations were sufficient to establish standing to assert a § 1983 claim, but as a matter of apparent first impression, the prison officials charged with executing a facially valid court order, enjoy absolute immunity from § 1983 liability for the conduct prescribed by those orders. (Montana Department of Corrections)

U.S. Appeals Court
CLAIMS

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
CLAIMS

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
RELEASE

Scott v. Baldwin, 720 F.3d 1034 (8th Cir. 2013). Former state inmates brought an action against a director of a Department of Corrections (DOC), alleging that their detention beyond their release dates violated their rights. The district court granted qualified immunity to the director. The inmates appealed. The appeals court affirmed. The appeals court held that the director’s taking of 43 to 60 days beyond the state inmates’ release dates to recalculate the inmates’ release dates after a judicial decision required credit for time served for supervision or services, was not clearly unlawful, as would be deliberate indifference, and therefore, the director was entitled to qualified immunity in the inmates’ § 1983 action alleging that over-detention violated Fourteenth Amendment substantive due process. The court noted that the judicial decision did not order the immediate release of the inmates, the director was not notified of the over-detentions, the inmates did not request recalculation of their release dates, and the director had to recalculate thousands of release dates. (Iowa Department of Corrections)

U.S. District Court
CLAIMS

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)

2014

U.S. Appeals Court
CLAIMS
ACCESS TO COURT
PLRA- Prison Litigation
Reform Act

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. Appeals Court
CLAIMS

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. Appeals Court
CLAIMS

Kuhne v. Florida Dept. of Corrections, 745 F.3d 1091 (11th Cir. 2014). A former state prisoner filed a § 1983 claim, alleging that state corrections officials acted with deliberate indifference by failing to provide him with medical care for his retinopathy. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the "refusal of medical care" form signed by the prisoner was modified after he signed it to indicate that he was refusing medical treatment for his retinopathy; (2) whether the prisoner voluntarily declined treatment for his retinopathy; and if so, (3) whether he changed his mind and requested medical treatment for his retinopathy thereafter. (Jackson Correctional Institution, Florida)

U.S. District Court
CLAIMS

Morris v. Corrections Corporation of America, 75 F.Supp.3d 457 (D.D.C.. 2014) A former District of Columbia inmate brought a state-court negligence action against a private prison operator, seeking damages for a scrotal burn injury he allegedly sustained when the water temperature in a prison shower spiked unexpectedly. The operator moved the action to federal court, and moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the operator had notice of allegedly dangerously high water temperatures in the prison showers, and the operator's alleged breach of its duty to properly maintain the shower facilities was not the proximate cause of the scrotal burn. (Correctional Treatment Facility, operated by Corrections Corporation of America, Washington, D.C.)

U.S. District Court
CLAIMS

Noble v. Three Forks Regional Jail Authority, 995 F.Supp.2d 736 (E.D.Ky. 2014). A diabetic former inmate brought an action against a regional county jail and a number of its employees, individually and in their official capacities, alleging both constitutional claims under § 1983 and state claims stemming from his incarceration. The defendants moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the county jail maintained an official policy or custom to deprive inmates of medical care to save money, thus precluding the former inmate's § 1983 Eighth Amendment deliberate indifference claim against jail arising from his alleged receipt of daily diabetes medication that was contrary to his doctor's advice, and food that exacerbated his diabetic condition.

The court found that the diabetic inmate was not at an excessive risk of serious harm, nor did county jail employees fail to take adequate precautions to protect the inmate from harm, and thus the employees were not deliberately indifferent to the inmate's serious medical condition, in violation of Eighth Amendment. The court noted that the inmate received substantial medical attention while incarcerated, and he was allowed special accommodations based on his diabetic condition, including taking his medication and blood sugar test kit to his cell. He was granted a specialized menu from the cafeteria, and his daily medication administration schedule was modified after consultation with a physician. (Three Forks Regional Jail Authority, Kentucky)

U.S. District Court
CLAIMS

Rodriguez v. County of Los Angeles, 96 F.Supp.3d 990 (C.D. Cal. 2014). Former and current inmates brought an action against a county, a county sheriff's department, and individual deputies, claiming that the deputies used excessive force to remove the inmates from their cells, in violation of the right to be free from excessive force under the Eighth and Fourteenth Amendments. After a jury verdict in favor of the inmates, the defendants moved for judgment as a matter of law, to vacate the judgment, and for a new trial. The district court denied the motion. The court held that evidence that supervising law enforcement officials in the county sheriff's department saw or heard inmates being beaten and knowingly and intentionally permitted the use of unconstitutional force, and that deputies engaged in malicious conduct with the intent to harm in removing the inmates from their cells, was sufficient to demonstrate that the officials and deputies used threats, intimidation, or coercion to violate the inmates' constitutional rights, as required to hold the officials and deputies liable. According to the court, the conduct of enforcement officials in supervising the extraction of inmates from their cells was not discretionary, and thus the supervising officials were not immune from liability resulting from the exercise of discretion, where the supervising officials saw or heard inmates being beaten and saw the injuries caused by these beatings.

The court found that evidence that the deputies engaged in malicious conduct with intent to harm, by using stun guns on sensitive body parts and on unconscious inmates, was sufficient to demonstrate that the deputies acted without a legitimate purpose in using the force, as required to hold the deputies liable.

According to the court, evidence that officials directed the deployment of riot-control rounds and grenades, and the use of stun guns, to forcibly extract inmates from their cells, and that the force surpassed what was necessary to gain control of the situation, was sufficient to show that the officials directed the use of excessive force and encouraged their subordinates' use of force with the intent to harm, warranting denial of qualified immunity to the officials. The court noted that the force was used on inmates who were not resisting and after the inmates had been incapacitated,

The court found that the jury's award of \$210,000 in punitive damages to current and former inmates was not so grossly excessively as would violate the Due Process Clause, despite the contention that the award of punitive damages exceeded the officials' ability to pay, where the jury found that the officials acted maliciously, causing serious physical harm to the inmates. The court noted that there was no major disparity between the award of punitive damages and the \$740,000 awarded as compensatory damages. (Los Angeles County Men's Central Jail, California)

U.S. District Court
CLAIMS

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
CLAIMS

Doe v. New York, 97 F.Supp.3d 5 (E.D.N.Y. 2015). A former inmate brought a § 1983 action against a former governor, prison doctors, and various other officials, alleging medical indifference to his Hepatitis infection in violation of the Eighth Amendment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the inmate's allegations were sufficient to plead the governor's personal involvement in the creation of an alleged prison policy of not disclosing infections to inmates and only treating those with obvious symptoms. The inmate alleged that testing during routine physical and medical examinations revealed that he was infected and that he was not informed or treated, and that he was subjected to a variety of tests and that results should have put doctors on notice that he was infected, but he was never advised of an infection. The inmate alleged that a prison policy was implemented "in or about 1994" to not disclose to inmates Hepatitis infections and to only treat those with obvious symptoms, that the former governor took office in 1995, and that the governor was part of meetings discussing infection treatment and prevention. (New York State Department of Correctional Services)

U.S. Appeals Court
CLAIMS

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. District Court
CLAIMS

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 spend 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 Facto Clause. (City of Montgomery and Montgomery County, Alabama)

U.S. Appeals Court
CLAIMS

Murchison v. Rogers, 779 F.3d 882 (8th Cir. 2015). A former state prisoner filed a § 1983 action, alleging that prison officials violated his First Amendment rights by censoring his weekly news magazine (Newsweek). The district court dismissed claims against certain officials, and granted summary judgment in favor of the remaining officials. The prisoner appealed. The appeals court affirmed, finding that censorship of the prisoner's weekly news magazine was rationally connected to the officials' legitimate penological interest in prohibiting materials that promoted violence, disorder, or violation of the law. The court noted that the prisoner had alternative means of exercising his First Amendment right. (South Central Correctional Center, Missouri)

U.S. District Court
CLAIMS

Stojceviski v. County of Macomb, 143 F.Supp.3d 675 (E.D. Mich. 2015). A former county jail inmate, individually and as the administrator of the estate of his brother, who died after being incarcerated at the same jail, brought an action against a county, county officials and employees, the jail's private medical provider, and the provider's employees, alleging deliberate indifference to medical needs and municipal liability under § 1983 and gross negligence under state law. The defendants moved to dismiss. The court held that the employees' delegation of medical care of the inmate to an outside contractor did not entitle them to qualified immunity on Eighth Amendment deliberate indifference claims arising from the inmate's death. According to the court, regardless of the county's reliance on the contractor, if the employees were aware of a risk to the inmate's health, drew the inference that a substantial risk of harm to the inmate existed, and consciously disregarded that risk, they too would be liable for the inmate's injuries under § 1983. The court found that allegations by the administrator of the estate were sufficient to state a *Monell* claim against the county and the jail's private medical provider for municipal liability under § 1983. The court noted that although many of the policies and procedures set forth by the administrator in support of his claim, such as failure to adhere to national standards, did not state a constitutional violation, the examples of where such standards were not followed were factual allegations supporting his assertion that inmates at the jail were not afforded adequate medical treatment. (Macomb County Jail, Michigan)

U.S. District Court
CLAIMS

Wilson v. Hauck, 141 F.Supp.3d 226 (W.D.N.Y. 2015). A former inmate brought a § 1983 action against corrections officers alleging they violated his rights by use of excessive force and/or by failing to protect him from that excessive force. The inmate moved for sanctions for alleged spoliation of evidence. The district court granted the motion. The court held that: (1) officers at one point possessed and had the ability to preserve original photographs of the inmate's injuries and the original videotape of his cell extraction; (2) officers were at least negligent with respect to the destruction or loss of both the original photographs and the videotape; and (3) differences between the originals and the copies were sufficient to permit a reasonable trier of fact to conclude that the originals would support inmate's claims. (Attica Correctional Facility, New York)

2016

U.S. Appeals Court
SEX OFFENDERS
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)

SECTION 14: FAILURE TO PROTECT

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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.

1971

U.S. District Court
FAILURE TO
PROTECT

Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971). The only legitimate purpose served by pretrial detention is assuring defendants' presence at trial. Minimally, a detainee ought to have the reasonable expectation that he would survive his period of detainment with his life; that he would not be assaulted, abused, or molested during his detainment; and that his physical and mental health would be reasonably protected during this period. Detainees may not be subjected to any punishment, "cruel and unusual" or not. Conditions of incarceration for detainees must, cumulatively, add up to the least restrictive means of assuring appearance at trial. One female staff member must be on duty twenty-four hours a day. There should be one staff member patrolling on each cell floor in the immediate area of every detainee on a twenty-four hour basis. (Palaski County Jail, Arkansas)

1972

U.S. Supreme Court
FAILURE TO
PROTECT

Haines v. Kerner, 404 U.S. 519 (1972) (Per Curiam), reh'g. 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)

1973

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Curtis v. Everette, 489 F.2d 516 (3rd Cir. 1973), cert. denied, 416 U.S. 995. Held that an allegation that prison officials failed to prevent the plaintiff from being violently attacked by another prisoner states a violation of due process under the fourteenth amendment. A prisoner has a constitutional right to be secure in his person and may not be deprived of liberty without due process of law. Since the court found that the complaint alleged a denial of due process under the fourteenth amendment, it did not discuss the equal protection clause of the fourteenth amendment or the eighth amendment prescription against cruel and unusual punishment. (Huntingdon Correctional Institute, Pennsylvania)

U.S. Appeals Court
BRUTALITY

Johnson v. Glick, 481 F.2d 1028 (2nd Cir. 1973), cert. denied, 414 U.S. 1033. While it is doubtful that the cruel and unusual punishment clause applies to pretrial detainees, they are protected by the due process clause against acts of brutality by correction officers. However, protection is less extensive than that provided by common law torts. (Manhattan House of Detention, New York)

U.S. Supreme Court
PRISONER SUICIDE

Logue v. United States, 412 U.S. 521 (1973). Logue was a federal prisoner being held in a Texas county jail while awaiting trial. The county jail contracted with the federal government to house federal prisoners. While in custody, Logue committed suicide, and his parents brought suit under the Federal Tort Claims Act (FTCA) which allows individuals to sue the U.S. Government for negligent acts of an employee of the government.

The district court found the sheriff's employees failed to provide adequate surveillance, and held the government liable. The Court of Appeals for the Fifth Circuit reversed the decision on the grounds that a "contractor exclusion" clause relieved the government of liability for the sheriff's employees' acts, and that these employees were not acting on behalf of a federal agency in an official capacity as the act intended. Logue's parents then sought certiorari from the U.S. Supreme Court. (Vacated and Remanded.)

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

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

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

1974

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Gates v. Collier, 501 F.2d 1291 (5th Cir. 1974). Where the plaintiff is able to show that inmates are being subjected to physical assaults and abuses by other inmates, the court may order injunctive relief, including the hiring of additional guards and classification of prisoners. (Mississippi State Penitentiary, Parchman)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Parker v. McKeithen, 488 F.2d 553 (5th Cir. 1974), cert. denied, 419 U.S. 838. The plaintiff claims he was subjected to cruel and unusual punishment in violation of the eighth amendment and denied equal protection under the fourteenth amendment when a fellow inmate attacked him. The inmate stabbed the plaintiff several times, and the plaintiff inmate alleged that prison officials knew that inmates had weapons, knew that many inmates were dangerous, and failed to properly protect the plaintiff. The Court of Appeals found the district court had improperly dismissed for failure to state a claim. (Louisiana State Prison, Angola)

U.S. District Court
PROTECTION FROM
HARM

Rhem v. Malcolm, 371 F.Supp. 594 (S.D. N.Y. 1974). Where the lack of staff causes violations of the right to be free from mistreatment and to be protected from harm, the court may order a staff increase. (Manhattan House of Detention, New York)

1976

U.S. Appeals Court
OFFICER ON
PRISONER
ASSAULT

Harris v. Chancellor, 537 F.2d 203 (5th Cir. 1976). A supervisory officer is liable under 42 U.S.C. Section 1983 if he refuses to intervene when his subordinates are beating an inmate in his presence. A warden's deliberate indifference to an inmate's severe and obvious injuries is tantamount to an intentional infliction of cruel and unusual punishment. (Glynn County Jail, Georgia)

U.S. District Court
WRONGFUL DEATH

Tucker v. Thompson, 421 F.Supp. 297 (M.D. Ga. 1976). In suit for wrongful death of a detainee, liability of city may be predicated on maintenance of an actionable nuisance. (Macon City Jail, Georgia)

1977

U.S. District Court
PROTECTION FROM
HARM
STAFFING

Ahrens v. Thomas, 434 F.Supp. 873 (W.D. Mo. 1977), aff'd, 570 F.2d 288. The jail must be supervised by adequately trained officers on a twenty-four hour basis. There shall be sufficient officers on duty at all times to protect detainees against assault and to permit entry into living areas on a twenty-four hour basis. Any group and individual counseling programs which may be established shall be staffed by properly trained professionals. Correctional personnel shall be selected on the basis of merit. There should be a matron on call twenty-four hours daily if women are detained in the new facility. (Platte County Jail, Missouri)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Stevens v. County of Dutchess, 445 F.Supp. 89 (S.D. N.Y. 1977). Sheriff is liable if prisoner-on-prisoner attack occurs under conditions of inadequate supervision. (Dutchess County Jail, New York)

1978

U.S. District Court
FAILURE TO
PROTECT
STAFFING

Hamilton v. Covington, 445 F.Supp. 195 (W.D. Ark. 1978). A duty is owed by the sheriff to provide adequate security. Liability may exist for deaths and injuries occurring from a fire in an unattended jail. (Nevada County Jail, Arkansas)

1979

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
SUPERVISION

Clappier v. Flynn, 605 F.2d 519 (10th Cir. 1979). Jail administration and staff are held liable for an inmate-on-inmate attack where evidence reveals that living areas were patrolled only once per shift. Evidence indicating that the guards failed to patrol the cell block more than once a day is sufficient for a jury to find that this omission was the cause of an attack on the plaintiff by other inmates, and that the failure to supervise violated the plaintiff's civil rights. The Court rejects the argument that the plaintiff's failure to seek assistance is fatal to his cause of action. (Laramie County Jail)

U.S. Appeals Court
SUPERVISION

Davis v. Zahradnick, 600 F.2d 458 (4th Cir. 1979). If a warden fails to properly supervise his officers and if improper supervision resulted in the guards' denial of access to medical treatment to a prisoner who had been beaten, the warden could be found vicariously liable for his failure to carry out the duty of supervision. (State Prison, Virginia)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Doe v. Lally, 467 F.Supp. 1339 (D. Md. 1979). An inmate is entitled to be reasonably free from homosexual attack and to protection to maintain that freedom. The presence of such attacks on a regular basis violates the eighth amendment. Failure to separate the inmates in the diagnostic center from the general population inmates, which results in regular incidents of homosexual assault, borders on gross negligence and removes any good faith defense from the defendants. Since there is a new facility under construction, the court does not undertake to provide extensive relief, but does require the defendants to devise a plan to separate the diagnostic inmates from the institutional general population as much as practicable. While the court rejects a major order on classification in light of the impending new facility, it does require some attention to the classification process to attempt to avoid such attacks by preventing minimum security individuals from ever entering the facility and minimizing the length of stay in the facility. (Maryland Reception and Diagnostic Center)

U.S. Appeals Court
WRONGFUL DEATH
MEDICAL CARE

Fielder v. Bosshard, 590 F.2d 105 (5th Cir. 1979). Jury awarded \$99,000 damages against jailer and sheriff for death of county jail prisoner. The deceased prisoner was arrested and jailed for nonsupport. Although informed of the prisoner's need for medication, jail officials did not respond to his repeated requests. The jury found the officials were callously indifferent to the prisoner's known medical needs. (Williamson County Jail, Texas)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Harvey v. Clay County Sheriff's Department, 473 F.Supp. 741 (W.D. Mo. 1979). Where the inmate informed the jail administration that a fight between his cell mate and himself was imminent and the jail administration failed to take action other than to admonish both of the cell mates that they would not tolerate fighting, the complaint alleging injuries resulting from a subsequent fight does not state a claim for violation of civil rights although it might state a claim for negligence. (Clay County Jail)

U.S. Appeals Court
FAILURE TO
PROTECT

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. District Court
PRISONER ON
PRISONER
ASSAULT

Redmond v. Baxley, 475 F.Supp. 1111 (E.D. Mich. 1979). A jury award of \$130,000 from damage sustained in a homosexual rape resulting from inadequate supervision is sustained. The guard on the ward was aware of threats against the inmate who was already placed in a protective custody because of threats. (Southern Michigan Prison)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Wojtczak v. Cuyler, 480 F.Supp. 1288 (E.D. Penn. 1979). 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

State Appeals Court
MEDICAL CARE

Burns v. Town of Leesville, 383 So.2d 109 (Ct. App. La. 1980). Court of appeals affirms judgment against pretrial detainee. The plaintiff, Bill Burns, was arrested and charged with drunkenness and was admitted to the Leesville City Jail. He was assigned an upper bunk in a double cell. After several hours, he attempted to leave

the bunk and fell across the bottom bunk, striking his back on its metal railing. He said that he was not able to move after his fall, requested medical attention several times, and it was refused.

Burns was released from custody the following morning and sought treatment for his back. His injuries were diagnosed as a contusion, abrasion and acute sprain, and he spent several days in the hospital.

Burns filed suit against the Town of Leesville, the Chief of Police, and the Village of New Llano (where he was initially arrested), claiming they were responsible for his injuries.

The plaintiff claimed that the defendants should not have placed him in an upper bunk because of his physical condition, and that they were negligent in failing to provide medical services.

The defendants argued that the plaintiff was negligent in attempting to get down from his bunk and should be held responsible for his own actions.

The trial judge concluded that the plaintiff was not unreasonably intoxicated, and was therefore responsible for his actions. The appeals court concurred, and ordered Burns to pay all court costs. (Leesville City Jail, Louisiana)

U.S. District Court
FAILURE TO
PROTECT

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

U.S. Supreme Court
WRONGFUL DEATH
MEDICAL CARE

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

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

U.S. District Court
MEDICAL CARE

Crow v. Washington County Board of Prison Inspectors, 504 F.Supp. 412 (W.D. Penn. 1980). Where the county board only contracted for medical care for the institution during the daytime, it knew or should have known that there would be no care available at the institution during the nighttime. Where the plaintiff's decedent was received at the institution in need of medical care during the nighttime and alleged that death resulted from the lack of medical care, the complaint states a claim upon which relief can be granted. (Washington County Prison, Pennsylvania)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER SUICIDE

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

U.S. Appeals Court
THREATS

Streeter v. Hopper, 618 F.2d 1178 (5th Cir. 1980). The state has an obligation to protect the safety of the inmates and where the courts have found a breach of this duty, they have wide discretion in formulating a remedy. 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. Appeals Court
WRONGFUL DEATH
USE OF FORCE

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

1981

U.S. District Court
USE OF FORCE

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

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

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

U.S. Supreme Court
PROTECTION FROM
HARM
STAFFING

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

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

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

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

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

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

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

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

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

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

U.S. District Court
SEARCH

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

U.S. District Court
PROTECTION FROM
HARM

Watson v. McGee, 527 F.Supp. 234 (S.D. Oh. 1981). A complaint which alleged that certain pretrial detainees were injured in a fire at the jail which resulted from the negligence of city and jail officials to properly maintain the jail stated a cause of action under Section 1983 for a violation of the detainees' due process rights. Even a mere negligence deprivation of a constitutional right is actionable. (Dayton City Jail, Ohio)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT
JUVENILES

Dillon v. Director, Dept. of Corrections, 552 F.Supp. 30 (W.D. Vir. 1982). Director of state corrections agency not liable for negligent acts in local jails. Although he had a statutory duty to implement standards and goals for local correctional facilities, the court found that the Director of the Virginia Department of Corrections was not liable for isolated acts of negligence that occurred in local jails. The court held that since he had no direct control over city jail employees he could not be held vicariously liable for their negligent acts.

The plaintiff had alleged that he was the victim of a sexual assault by an adult and two juveniles while incarcerated in the juvenile section of the Roanoke City Jail as a result of various officials' negligence. He was also suing the City of Roanoke, the sheriff, and several jail personnel. The director was dismissed from the suit. (Roanoke City Jail, Virginia)

State Appeals Court
FAILURE TO
PROTECT

Iglesia v. Wells, 441 N.E.2d 1017 (Ind. App. 1982). Sheriff's department may be held liable under a negligence theory for release of an indigent man. The First Circuit Court of Appeals for Indiana held that the sheriff's department owed a man a duty to release him in a manner which would not subject him to unreasonable danger, ordering the trial court to hear the evidence and decide the case.

The case involved an indigent man who was arrested for public intoxication. After pleading guilty to the charge, he was ordered to pay costs and a fine, but having no money, spent one week in the county jail. He was released at one minute past midnight on the final day of his sentence. The man's clothing was unsuitable for the cold winter weather on the night of his release, he could not speak or understand English, he lived far from the jail and had no transportation.

Becoming disoriented, the man wandered, lost his shoes, and suffered frostbite resulting in partial amputation of his feet. (Marion County Jail, Indiana)

State Court
STAFFING

Jackson v. Hendrick, 446 A.2d 226 (Penn. 1982) The court finds that the shortage of guards led to constitutional and statutory violations. Jail officials shall fill and maintain sufficient staff positions to assure jail security and the protection of inmates.

State Appeals Court
WRONGFUL DEATH
PRISONER SUICIDE

Layton v. Quinn, 328 N.W.2d 95 (Ct. App. Mich. 1982). Judgment for the county is reversed in light of failure to comply with court orders. The plaintiff, administratrix of the estate of the decedent inmate who committed suicide in the Wayne County Jail, alleged wrongful death and sought to recover damages. The inmate attempted suicide on the first day in jail, threatened to take his life three days later and was transferred to a disciplinary cell which was the farthest from the guard station. After two days in the cell he committed suicide. Prior to his incarceration, the Wayne County Circuit Court had issued orders to county officials concerning the admission, custody, care and treatment of inmates in the jail. The trial court granted accelerated judgment for the county defendants who claimed governmental immunity. This was reversed by the appeals court, citing the prior court orders which were so explicit that failing to comply must be deemed outside the protection of governmental immunity.

The original complaint alleged that the wrongful death was the result of negligence in the defendant's hiring, training and supervision of jail personnel. (Wayne County Jail, Michigan)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

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)

U.S. District Court
WRONGFUL DEATH
PRISONER SUICIDE

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Reynolds v. Sheriff, City of Richmond, 574 F.Supp. 90 (E.D. Va. 1983). Sheriff may be liable for pretrial detainee's beating while housed with convicted felons. The United States District Court for the Eastern District of Virginia has refused the motion of the defendant sheriff to dismiss him from a suit brought by a pretrial detainee. The detainee alleges that he was beaten by convicted felons while he was detained at the sheriff's facility. He accuses the sheriff of directing the act or acquiescing to it after it happened.

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

U.S. Supreme Court
PRISONER ON
PRISONER
ASSAULT

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 USC Section 1983 civil rights action may be awarded punitive damages when a government official's conduct "involves reckless or callous indifference to the federally protected rights of others." The court rejected the argument of the defendant prison guard that the test for an award of punitive damages is one of "actual malicious intent." The decision came on appeal of a lower court's assessment of damages against Missouri corrections officer William Smith for placing inmate Daniel Wade in a cell where he was beaten and sexually assaulted. (The appeal challenged only that portion of the award assessed for punitive damages. Punitive damages are imposed as punishment over and above actual damages that simply compensate a victim for losses incurred.)

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

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

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

State Appeals Court
MEDICAL CARE

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

U.S. District Court
PRISONER SUICIDE
ATTEMPT

Soto v. City of Sacramento, 567 F.Supp. 662 (E.D. Cal. 1983). City may be held liable for prisoner's attempted suicide. Placed in an isolation cell following a disturbance, the plaintiff subsequently attempted suicide, suffered severe brain damage, and was unable to care for himself or to communicate with others concerning the incident.

Filing suit, the plaintiff is attempting to hold the city and county liable for improperly placing him in an isolation cell and placing him in a cell which was periodically used by prisoners to commit suicide.

The federal district court found that the city and county may be liable, and ordered a jury to resolve these issues, and other elements of the suit which involved alleged excessive use of force by the arresting officers. (Sacramento City Lockup, California)

U.S. Appeals Court
WRONGFUL DEATH
PRISONER SUICIDE

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Stokes v. Delcambre, 710 F.2d 1120 (5th Cir. 1983). Award of \$380,000 to a college student is upheld by circuit court. In a civil rights suit, the U.S. Court of Appeals for the Fifth Circuit has upheld a lower court's decision to award \$380,000 in compensatory and punitive damages against a Louisiana sheriff and his deputy. The twenty-one year old plaintiff was arrested with three other occupants of a truck after a beer bottle was thrown at a pedestrian. While housed in the dayroom of the local jail, the plaintiff was beaten and forced to engage in sexual acts by two inmates. His yells and screams for help were ignored by jail staff.

The circuit court affirmed the jury award of \$205,000 in punitive damages against the sheriff, \$105,000 in punitive damages against the deputy, and \$70,000 in compensatory damages against both defendants. The court concurred that jailers owe a constitutional duty to prisoners to provide them protection from injury, that the evidence indicated an indifference to the safety of prisoners, that due to the indifference a "good faith" defense was not warranted, and that punitive damages were appropriate because the actions of the defendants were malicious, wanton and oppressive. (Vermillion Parish Jail, La.)

State Appeals Court
FAILURE TO
PROTECT

Stout v. City of Porterville, 196 Calif. Rptr. 301 (Ca. Ct. App. 1983). An intoxicated person is not allowed to sue a city for failing to arrest him before he was struck by a car. Although not directly a detention case, the court decision indicates that a person must show a special relationship between himself and a governmental agency if he is to sue for failure to provide protection.

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

State Appeals Court
WRONGFUL DEATH
PRISONER SUICIDE

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

1984

U.S. District Court
STAFFING

Alberti v. Heard, 600 F.Supp. 443 (S.D. Tex. 1984). Federal district court orders minimum staffing plan for Texas jail. After establishing the existence of constitutional violations, resulting in the lack of protection for prisoners housed at the Harris County Central Jail in Houston, the court ordered the sheriff to implement a new staffing plan requiring a minimum of two staff per quadrant and visual inspections at least every hour. The county had been previously ordered to correct the deficiencies at the jail, and the court did not accept their defense that there were no funds for additional staff. The plaintiffs cited high levels of violence and sexual assaults at the jail as a result of the condition and design of the facility: inadequate supervision, unreliable communication systems and lack of staff. (Harris County Jail, Texas)

U.S. Appeals Court
USE OF FORCE

Baker v. St. Louis Board of Police Commissioners, No. 83-2536 (8th Cir. 1984). Court finds no liability for alleged prisoner beating, but expresses strong criticism of situation. Although the United States Court of Appeals found no liability in this case, it expressed strong criticism of the situation in which a suspect enters custody in good health and emerges brutally beaten, stating: "The murder of a police officer is an outrage. The physical abuse by police officers of one suspected of this crime, however, cannot be tolerated in society governed by law."

The prisoner claimed he was beaten by police after he was admitted to custody, in retaliation for his alleged murder of an undercover police officer. Evidence presented at trial established that the prisoner was in good health when he entered police custody, and that three days later he had welts on his back, cigarette burns on his arms, bruises, and an injured right eye in which vision was totally lost.

The court found for the defendants as a result of deficiency of proof and legal issues concerning who caused the injuries and whether they were a result of policy or custom. (City of St. Louis, Missouri)

State Appeals Court
WRONGFUL DEATH
PRISONER SUICIDE

Brewer v. Perrin, 349 N.W.2d 198 (Mich. App. 1984). Detention staff may be liable for juvenile's suicide because they failed to monitor actions and to make regular checks. An appeals court in Michigan has ordered a case to proceed to trial in which the plaintiffs charge the detention facility staff with responsibility for the suicide of their fifteen year old son.

The boy was arrested after assaulting his twin brother. He was combative and belligerent during arrest and transport. Upon admission to a detention cell he continued to yell and scream. A staff member turned off an audio monitor because he decided the noise was interfering with department activities.

After ninety minutes the boy hanged himself. He was only checked one time by facility staff during that period. The appeals court also instructed the jury to determine if liability might also result from violation of the state statutes regarding juvenile detention. (Southgate City Jail, Michigan)

U.S. Appeals Court
WRONGFUL DEATH
PRISONER ON
PRISONER
ASSAULT

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

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

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

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

State Court
PRISONER SUICIDE

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

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

State Court
SUPERVISION
PRISONER ON
PRISONER
ASSAULT

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

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

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

U.S. Appeals Court
FAILURE TO
PROTECT
MEDICAL CARE

Matzker v. Herr, 748 F.2d 1142 (7th Cir. 1984). Appeals court reverses lower court ruling; finds that pretrial detainee's due process rights may have been violated by alleged denial of competent medical care, and Section 1983 action possible for failure to protect. The plaintiff sought damages for injuries received while a pretrial detainee at the St. Clair County Jail in Belleville, Illinois. A federal magistrate had dismissed the action. The Seventh Circuit Court of Appeals reversed the decision.

The plaintiff was admitted to the jail as a detainee. A Caucasian, he "had some trouble" with black inmates shortly after admission and was transferred to another cell block. In his new cell block he was involved in another interracial fight and was transferred to segregation. His attorney brought his assignment to segregation to the attention of the court, and he was subsequently transferred to Cell Block A.

The plaintiff requested transfer from Cell Block A, fearing additional problems with black inmates. Four days later he was beaten by two black inmates and suffered the loss of three teeth, a fractured nose and an eye injury. The plaintiff alleged that he was beaten for over fifteen minutes before the corrections officer came to investigate. Although taken to a hospital the next day, injuries to his teeth and eye were not treated for three months, and he allegedly suffered permanent injury. The appeals court reversed the dismissal, ordering the case to proceed to trial. (St. Clair County Jail, Illinois)

1985

U.S. Appeals Court
WRONGFUL DEATH
MEDICAL CARE

Garcia v. Salt Lake County, 768 F.2d 303 (10th Cir. 1985). Appeals court affirms \$147,000 judgment against county for admitting unconscious detainee who died after admission. Although the county had a policy of taking all unconscious arrestees to a hospital, evidence showed that they were routinely admitted to the jail if they were suspected of being intoxicated. In this case, the arrestee was taken to the hospital following a traffic accident. While there he ingested some barbiturates which had been prescribed earlier and escaped while unattended. He was found unconscious in front of the hospital, was examined by a doctor, and then admitted to the jail. He was checked every thirty minutes by an officer, but was not examined by a medic until four hours after admission. He eventually died after being placed on life support systems. The appeals court agreed that jail practices differed from policies, and practices therefore became "policy" for the purpose of determining liability. In this case, the county was held liable for implementing the "policy" and was ordered to pay \$147,000 plus costs. The court noted that eighth amendment protections do not apply until after an adjudication of guilt, but that pretrial detainees are entitled to the same degree of protection and care as convicted offenders under the due process standard (fourteenth amendment). (Salt Lake County Jail, Utah)

U.S. District Court
PRISONER SUICIDE

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

State Court
PRISONER SUICIDE

Hake v. Manchester Tp., 486 A.2d 836 (N.J. 1985). Court finds dispatcher with CPR training qualified as expert on rescue attempts. A police dispatcher who was present when a teenage detainee was discovered to have hanged himself was qualified by the court to give expert testimony on the lifesaving potential of the aid given to the prisoner. The court noted that testimony can be given by a witness whose competence in this field is demonstrated by education, training or experience, and that a professional license or degree in medicine is not a prerequisite. The court remanded the case for reconsideration in light of the qualification of the witness. (Manchester Township, New Jersey)

U.S. Appeals Court
FAILURE TO
PROTECT

Hayes v. Vessey, 777 F.2d 1149 (6th Cir. 1985). Although a corrections officer was perhaps incompetent and held animosity toward a teacher because she was a woman, he was not liable for failing to protect her from being raped while he was on lunch break, ruled the Sixth Circuit Court of Appeals. The teacher claimed discrimination and denial of equal protection because the guard had not ticketed the rapist earlier in the day when discovered on the grounds without authorization. She claimed he set the tone for extremely lax security which caused her to be raped. He was not liable on such a theory because as a subordinate employee he had no authority to set a security policy, nor was he responsible for not ticketing the rapist earlier because such action was too remote from causation. Another teacher allowed the rapist to regain entry during lunch by unlocking the gate in violation of school rules. Finally, even if the guard had been at his station during the fifteen minute attack, he would not have been able to hear the woman's cries for help. His station was located at the end of the hall, and her room was soundproof. The court reversed a jury's judgment against the officer for \$200,000 in compensatory damages and \$100,000 in punitive damages.

Also at issue was whether the teacher could collect from other prison officials for negligence in ignoring high levels of sexual tension, condoning an attitude of indifference toward danger to female employees, failing to require adequate security for female employees, assigning her to work in a remote area more dangerous than areas assigned to male teachers, and defeating automatic locking systems which led to the unauthorized entry of the rapist. The court found no liability for the random act and ruled that the plaintiff's remedy in worker's compensation precluded suit. She received compensation disability benefits which contained special provisions for prison employees injured by inmates, provisions not applicable to other employees. (State Prison at Jackson, Michigan)

State Supreme Court
PRISONER
SUICIDE

Horne v. Beason, 331 S.E.2d 342 (S.C. 1985). City not liable for suicide of seventeen-year-old prisoner. After his arrest for charges of driving with a suspended license and operating an uninsured motor vehicle, a seventeen-year-old arrestee was admitted to detention in a city lockup. Although he was wearing only a bathing suit and a bathrobe, staff did not identify him as a potential suicide risk. About thirty-five minutes after admission to his cell he was found dead, hanging from the overhead bars.

The judge determined that the city should not be held liable for the suicide, stating: ...Jailors, like others, are expected to perform their duties, avoid negligence and foresee that certain acts might cause injury to others. A jailor, however, is not expected to be a fortuneteller or psychologist or psychiatrist. To require a jailor to foresee that a person incarcerated under circumstances described hereinabove would commit suicide would require of him capabilities, characteristics and genius unknown to the ordinary, reasonably prudent jailor.

The judge also noted that he could not hold the city liable because it was immune from the suit under a doctrine of sovereign immunity established in McCall v. Batson, 329 S.E.2d 741 (S.C. 1985) which held that governmental entities which did not have liability insurance (such as this city) are immune from suit until July, 1986. (Greer City Jail, South Carolina)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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. Appeals Court
FAILURE TO
PROTECT

Lewis v. Cooper, 771 F.2d 334 (7th Cir. 1985). A guard, who was told about a cell fight about to begin, stood in front of the cell apparently hoping that his presence would deter the violence. He could not enter the cell to break up the fight because he didn't have the cell keys with him at the time. He radioed to fellow guards to bring the keys. The attack lasted nearly twenty minutes before guards could enter the cell to break it up. A verdict was directed in favor of the defendants on the failure to protect issue.

However, the court found a deliberate indifference on the guards' part to provide prompt medical treatment following the incident and awarded the inmate \$2,000 in compensatory damages and \$3,500 in punitive damages. The guards disputed the claim by asserting the inmate never asked for medical treatment. Given that the beating lasted for nearly twenty minutes, and the inmate claimed he was bleeding from the nose, mouth, and back of the head, the court said that a jury could reasonably conclude that a deliberate indifference to medical needs existed. The issue of whether medical treatment would have improved the inmate's condition was not reached because it was not preserved for review. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
PRISONER SUICIDE

Partridge v. Two Unknown Police Officers of Houston, 751 F.2d 1448 (5th Cir. 1985), 791 F.2d 1182 (5th Cir. 1986). City can be sued for failing to prevent prisoner suicide in lockup. Parents of a pretrial detainee who committed suicide brought a Section 1983 action against city and police department personnel. An arrestee apparently became violent and agitated when he was arrested, attempting to kick the doors and windows out of the police car in which he was transported. By the time he arrived at the city jail he was composed, and the transporting officers did not call attention to his

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

The prisoner was placed in solitary confinement, where he hanged himself within a few hours of his arrest. The parents sued the City of Houston, and the Circuit Court of Appeals initially ruled that their suit alleged a legitimate constitutional claim because the city had been deliberately indifferent to the prisoner's serious medical needs, determining that suicidal behavior constituted a serious need and that protecting prisoners from themselves is "an aspect of the broader constitutional duty to provide medical care..." The appeals court later ruled that police officers at the municipal jail had a duty, at minimum, not to be deliberately indifferent to the pretrial detainee's serious medical needs, including need for psychological or psychiatric treatment. (City Jail, Houston, Texas)

U.S. Appeals Court
FAILURE TO
PROTECT
PRISONER ON
PRISONER
ASSAULT

Porm v. White, 762 F.2d 635 (1985). A federal appeals court ruled that an inmate's constitutional rights were violated by the reckless disregard shown by Missouri prison officials for his right to be free from attack by fellow inmates. James Porm, an inmate at the Missouri Training Center for Men in Moberly, Missouri, brought a suit against prison officials after he was stabbed by another inmate. According to Porm's testimony, overcrowding and sexual harassment of white inmates by certain black inmates had increased the racial tension in the facility during the weeks preceding the stabbing. Porm contended that he told officials that violence was likely to occur and was assured that appropriate action would be taken. Several days later, Porm's brother, also an inmate, was involved in a fight with a member of the group allegedly sexually harassing other inmates. Porm again informed officials that he had been threatened, and two days later he was stabbed by an inmate he claimed was a member of the same group.

In order to sustain his claim that officials failed to take sufficient precautions to protect him, Porm had to show deliberate indifference on their part either by intending to deprive him or by reckless disregard of his right to be free from violent attacks by fellow inmates. To establish the officials' reckless disregard, the court had held that the existence of a pervasive risk of harm must be shown. According to the court, Porm presented evidence which was sufficient to allow the conclusion that a pervasive risk of harm did exist and that officials failed to reasonably respond to that risk. (Missouri Training Center for Men in Moberly, Missouri)

U.S. District Court
THREATS

Riley v. Jeffes, 777 F.2d 143 (3rd Cir. 1985). A federal appeals court held that a Pennsylvania inmate may sue prison officials because he is in fear of attack. James Riley alleged in his suit that some inmates were given cell keys for most of the day and left unsupervised. He contended that the keys sometimes were used to open other inmates' cells, and that on one occasion his cell was opened, and he was robbed. He also contended that this key practice allowed other inmates easy access to his cell while he was asleep. As a result, he had lived in fear of robberies, assaults, threats, homosexual activities, fights and stabbings for the past six months.

The court found that these allegations, if true, required Riley to live day in and day out with a real and persistent fear of personal injury and that prison officials were totally indifferent to his safety. The court held that an inmate's right to be protected from constant threat of violence and sexual assault from other inmates does not require that he wait until he actually is assaulted before obtaining relief. It is only necessary that inmates show a pervasive risk of harm from other prisoners, in order to prevail. (State Correctional Institution at Huntingdon, Pennsylvania)

U.S. Appeals Court
PRISONER SUICIDE

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Thomas v. Booker, 762 F.2d 654 (8th Cir. 1985), cert. denied in 106 S.Ct. 1975. City jail chief of security held liable for prisoner-on-prisoner attack; plaintiff awarded \$13,000. The defendant was initially assigned to a one man cell in the St. Louis City Jail's administrative segregation unit. He was subsequently assigned to the general population but was placed in disciplinary segregation when a homemade knife was found in his cell. He was returned to the general population, where he was attacked

by another prisoner. After treatment, he was again returned to the same four man cell where he was again injured in a fight between cell mates.

The prisoner filed suit claiming city officials failed to protect him from other prisoners. During the trial, testimony indicated that he had asked to be placed in administrative segregation because he feared injury and that he told the defendant several times that he feared for his safety. The court found that the defendant had acted with reckless disregard for the safety of the plaintiff, awarding \$13,000 in damages. Other defendants were not found liable. (St. Louis City Jail, Missouri)

U.S. District Court
SUPERVISION
PROTECTION FROM
HARM

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
PROTECTION FROM
HARM
STAFFING
SUPERVISION

Alberti v. Klevenhagen, 790 F.2d 1220 (5th Cir. 1986). Appeals court upholds remedial measures of district court, finding levels of violence and sexual assault violated inmates' eighth amendment rights and ordering increased staffing. In a case initiated in 1972, the United States Court of Appeals for the Fifth Circuit agreed with the sweeping corrective measures ordered by a federal district court. The original class action suit was brought under 42 U.S.C. Section 1983, alleging that the facilities and operations of the Harris County detention system violated inmate constitutional and statutory rights. In February, 1975, a consent judgment was entered in the district court, calling for upgrading of existing facilities, construction of a new central jail, and committing the county to provide sufficient and adequately trained guards and other staff to assure the security of inmates.

In December, 1975, the county's compliance with the consent judgment was challenged; following hearings, a broad remedial order was issued. The court ordered adequate training and pay increases for jail personnel and ordered that staffing be increased to provide one jailer for every twenty inmates. In 1978 the court reluctantly approved plans for a new central jail. The plaintiffs had argued against the planned use of multiple occupancy cells, and the court expressly conditioned occupancy of the new facility on the provision of adequate staff. In 1982 and 1983 the district court held hearings to determine if adequate staffing was provided for the newly-opened detention facility. The court ordered the county to prepare a plan which complied with Texas Commission on Jail Standards (TCJS) requirements of one officer to forty-five inmates, eventually approving such a plan. When the county failed to meet a June, 1983, deadline for full staffing, the plaintiffs filed a motion for contempt.

The county was granted TCJS approval in October for an alternative poststaffing plan, which provided less staff than the previous "one to forty-five" plan. After extensive hearings in 1984, and the presentation of evidence and testimony on violence in the facilities, the court ordered the implementation of a staffing plan which was similar to one proposed by the plaintiffs' experts, calling for approximately the same number of staff as the original "one to forty-five" plan, but incorporating a different assignment scheme.

On appeal, the county argued that the evidence presented in the 1984 hearings was not sufficient to support the district court finding of constitutional violations, and that the new staffing plan ordered by the court exceeded what should be required to remedy any such violations. The appeals court affirmed all aspects of the district court corrective orders, stating that "...it is more regrettable that after thirteen years conditions in the jails are still in contravention of constitutional standards. Despite the efforts of the parties and the court, inmates continue to be beaten, raped, abused, and assaulted. The district court has acted properly in fashioning new relief for an old malady." (Harris County Detention Facilities, Texas)

State Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

with adequate notice of an impending assault; and (2) the state was not liable for failure to have sufficient guards, in view of expert testimony that procedures followed were adequate. (Columbus Correctional Facility, Ohio)

U.S. Supreme Court
PROTECTION FROM
HARM

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
PROTECTION FROM
HARM

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)

State Appeals Court
PRISONER ON
PRISONER
ASSAULT

Dizak v. State, 508 N.Y.S.2d 290 (A.D. 3 Dept. 1986). An inmate brought action against the state alleging that it was guilty of negligence in permitting a second inmate to have access to a pick axe used to attack the inmate. The court of claims entered judgment in favor of the state, and the inmate appealed. The Supreme Court held that the inmate attacked by a second inmate failed to establish that the state knew or should have known of the inmate's tendency toward violent behavior, or that the supervision provided was not sufficient. The inmate failed to demonstrate that supervision by a guard who continuously patrolled the work area checking on each member was insufficient, despite evidence that the attacking inmate had been the subject of eleven or twelve misbehavior reports, all but two of which concerned minor nonviolent violations. The correction officer who had made an earlier misbehavior report on the inmate who attacked the second inmate did not have training or education to qualify him as an expert to render his opinion that the inmate could cause a major incident on the floor at any time, and that the inmate had almost caused two incidents, so that portion of the report containing such a statement was clearly inadmissible. (Adirondack Correctional Facility, New York)

U.S. District Court
FAILURE TO
PROTECT

Johnston v. Lucas, 786 F.2d 1254 (5th Cir. 1986). Prison officials released from liability for prisoner stabbing by appeals court in light of recent Supreme Court rulings. A federal district court awarded a prisoner monetary damages from guards and prison officials for improperly placing him with another prisoner who had known animosity toward him. The appeals court noted that the eighth amendment affords prisoners protection against injury at the hands of another prisoner, but that the Supreme Court had recently stated that "the protections of the Due Process Clause, whether procedural or substantive, are not just triggered by lack of due care by prison officials." Davidson v. Cannon, 106 S.Ct. 668 (1986). While each official bore responsibility for exposing the prisoner to danger, the court found it arguable that their default could be considered an abuse of power and an eighth amendment deprivation. As stated in Whitley v. Albers, 106 S.Ct. 1078 (1986), the deliberate indifference standard articulated in Estelle v. Gamble is appropriate in this case. The appeals court concluded that none of the defendants could be shown to be liable because none of them was guilty of conscious indifference to the danger of or infliction of unnecessary pain. (Parchman State Penitentiary, Mississippi)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Lewis v. O'Leary, 631 F.Supp. 60 (N.D. Ill. 1986). State prison officials not liable for prisoner-on-prisoner assault in light of recent Supreme Court decisions. Given the recent U.S. Supreme Court decisions in Davidson v. Cannon and Daniels v. Williams, a federal district court concluded that prison officials could not be held liable for failing to protect a prisoner because: "... the law in this area has been significantly altered. It is now definitively established that while a correctional official who recklessly disregards a substantial risk of danger to an inmate may be liable under the Eighth Amendment, one who negligently fails to take reasonable steps is not." In this case, prison officials called the plaintiff prisoner to their office to tell him that they had received anonymous telephone calls threatening his life. When the prisoner did not express concern, they took no action. He was attacked and repeatedly stabbed several days later. The court ruled that prison officials failure to transfer the inmate did not rise to "reckless" conduct, since the inmate himself told officials there was only a "mere possibility" not a "strong likelihood" of attack. (Stateville Correctional Center, Illinois)

U.S. District Court
FAILURE TO
PROTECT

Musgrove v. Broglin, 651 F.Supp. 769 (N.D.Ind. 1986). A former prison inmate brought a civil rights action against prison officials. The district court held that: (1) the guard violated the inmate's eighth amendment rights when he injured him; (2) the prison superintendent acted with deliberate indifference in view of his knowledge of problems with the guard and failure to take proper action; and (3) the inmate was entitled to damages in the amount of \$12,000. A guard violated the eighth amendment rights of a prisoner by causing physical injury to him when he discovered him lying on his bed following a population count. (Westville Correctional Center, Indiana)

U.S. Appeals Court
WRONGFUL DEATH

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

U.S. District Court
TRANSFER

Ross v. United States, 641 F.Supp. 368 (D.D.C. 1986). The District of Columbia, its mayor, and a corrections director were not liable for the alleged negligent transfer of an inmate into the federal prison system at Marion, Illinois. The inmate was killed by other inmates. The inmate was transferred into the federal system at the request of District of Columbia officials after he seized hostages in an escape attempt. The District of Columbia officials did not request that the inmate be transferred to any particular federal prison. (United States Prison at Marion, Illinois)

U.S. Appeals Court
PRISONER SUICIDE

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

U.S. District Court
PRISONER SUICIDE

Strandell v. Jackson County, Ill., 634 F.Supp. 824 (S.D.Ill. 1986). The parents of a pretrial detainee who committed suicide brought a civil rights action against the county and the prison officials. The district court held that: (1) the parents stated a claim that the detainee was deprived of due process right to be free from punishment; (2) the parents stated cause of action under Illinois statutes and regulations; (3) the county was not immune from liability; (4) the county sheriff, jailor and superintendent were not immune from liability; (5) parents could not recover punitive damages or prejudgment interest; and (6) the district court would retain pendent jurisdiction over state law claims. Mandatory language of Illinois County Jail standards providing that detainee shall be assigned to suitable quarters, that emotionally disturbed detainee shall be kept under constant supervision, and that suspected disturbed detainee shall be immediately examined by a physician creates a protected liberty interest and an expectation of certain minimal standards and treatment. The parents of a pretrial detainee who committed suicide stated a civil rights cause of action under the fourth and fourteenth amendments by alleging that prison officials violated the detainee's liberty interest and expectation of certain minimal standards for the physical condition of the jail facility, as established by Illinois regulations, and an expectation of treatment that protects safety, health, and well-being of pretrial detainees. No

protected liberty interest could be premised on state jail standards relating to the physical condition of the jail, with respect to action based on the suicide of a pretrial detainee while confined in the county jail, where state jail standards did not require the county jail which had been built in 1926 to comply with standards regarding physical conditions until January 1986, and the death occurred in March 1984. The fact that the individual inmate could not, under state law, demand compliance with state jail standards, did not establish that inmates had no claim of entitlement to have those standards followed, where State Department of Corrections was given right to enforce compliance with state jail standards. (Jackson County Jail, Illinois)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
FAILURE TO
PROTECT

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)

U.S. Appeals Court
PROTECTION FROM
HARM

Washington v. District of Columbia, 802 F.2d 1478 (D.C.Cir. 1986). Reckless failure of state officials to remedy unsafe prison conditions did not deprive a correctional officer of his constitutional rights, according to a recent U.S. Court of Appeals decision. Preston Washington was attacked and severely injured by a prisoner while employed as a correctional officer at the Lorton Reformatory. Washington sought \$20 million damages alleging reformatory officials had been warned of unsafe conditions at Lorton and were under court order to correct them. By failing to take remedial action the officials violated his constitutional rights, he argued.

The court noted, however, that not all injuries inflicted by persons acting under color of state law violate constitutional rights. While Washington had a liberty interest in "personal security," the officials sued had no constitutional duty to protect his security. Washington argued that prison guards have the same constitutional rights as prisoners. The court disagreed, distinguishing that prisoners are in custody involuntarily and prison officers work voluntarily. Therefore, the state had no constitutional obligation to protect Washington from the hazards inherent in that occupation. (Lorton Reformatory, District of Columbia)

1987

State Appeals Court
PRISONER ON
PRISONER
ASSAULT

DeBow v. City of East St. Louis, 510 N.E.2d 895 (Ill. App. 1987), cert. denied, 116 Ill.2d 552. A detainee was injured during his confinement in a city lockup. He was arrested for illegal transportation of alcohol and he was placed in the same cell with a man arrested for aggravated assault. The plaintiff was later found unconscious on the floor of the cell with a severe head injury. Blood was found on one of the boots that were in the possession of the other occupant of the cell. The injured detainee sued the city and its police chief alleging that pre-trial detainees were inadequately supervised, that officers failed to monitor their conduct and failed to segregate violent detainees from other detainees. The inmate suffered permanent brain injury from the assault and a jury initially awarded \$3.4 million in damages. On appeal, the court upheld this award, noting that "specific intent" to deprive the detainee of his rights was not required. The state appeals court found that the plaintiff had established that the defendants had received numerous notices of noncompliance with minimum jail safety standards, including a warning that detainees were being inadequately supervised. Hourly visual checks of detainees were not being conducted and no one understood it to be their official duty to conduct such routine checks. According to the court, it is sufficient that the defendants acted recklessly by disregarding detainee safety. This disregard can be demonstrated either by both deliberate acts or by the failure to act. Since the repeated notices of noncompliance with safety standards provided notice of unsafe conditions, the appeals court agreed that the jury could conclude that the failure to act to correct the situation was reckless. (City of East St. Louis, Illinois)

U.S. District Court
PRISONER SUICIDE

Gagne v. City of Galveston, 671 F.Supp. 1130 (S.D. Tex. 1987). Even though a departmental policy called for him to do so, an officer's failure to remove a belt of a prisoner who used it to hang himself, while a violation of policy, was not a

constitutional violation. A Section 1983 lawsuit was brought against the city and the police department by the deceased prisoner's estate and surviving family members. There was nothing in the prisoner's behavior to notify the officer that there was a possibility of suicidal tendencies. Further, because there was no showing that the incident occurred pursuant to an official policy, even if there had been a constitutional violation in this case, there would be no city or departmental liability. This appeared to be a single, isolated incident, insufficient to demonstrate official policy. There was no showing of a widespread pattern of similar incidents. The plaintiffs' argument that understaffing of the facility resulted in this case in a deprivation of rights was also rejected by the court. (Galveston City Jail)

U.S. Appeals Court
STAFFING

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM

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)

State Appeals Court
PRISONER SUICIDE

Gordon v. City of New York, 517 N.E.2d 1331 (N.Y. 1987). The New York Court of Appeals stated that there is a duty to provide reasonable care when prison authorities know or should know that a prisoner has suicidal tendencies or that a prisoner might physically harm himself--to assure that such harm does not occur. But the city was found not liable for lack of knowledge or proper supervision when a detainee sustained injuries caused by his plunging headfirst into a toilet bowl located in his cell. The court found that the injury that occurred was not reasonably foreseeable and that the city took "every possible precaution" against foreseeable harm. The 19-year-old detainee, who was charged with attempted grand larceny and possession of burglary tools, exhibited "boisterous, irrational and delusional behavior" at the time of his arrest, and was consequently placed alone in a bare cell without a belt or shoelaces and with a correctional officer seated directly outside his cell monitoring him. The court rejected the argument that the detainee should have been physically immobilized or restrained until he received medical attention. The behavior that the detainee exhibited, which included climbing the bars of the cell, stating that he would like to fly, and yelling out "I am God," "Jesus Christ Superstar" was "not uncommon in holding pens and would not in itself warrant medical attention." The care taken in this case, according to the court, was reasonable and no liability was imposed given the facts that the detainee had stated his intention to feign insanity, although he appeared normal before the incident, and the officers had no knowledge of a suicidal history. (New York City Department of Corrections)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT
STAFFING

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

LaMarca v. Turner, 662 F.Supp. 647 (S.D. Fla. 1987). As a result of a former prison superintendent's indifference to prisoners' rights, prisoners who were gang raped or assaulted were entitled to relief under Section 1983 according to a federal district court. With respect to all of the inmates except two, the superintendent was in a

position to take steps that could have averted the attacks but, through his callous indifference, failed to do so. The prisoners were entitled to injunctive relief, including establishment of committees to advise the court in the formulation of specific injunctive relief. The court ruled that a prisoner has a right to be protected from the constant threat of violence and from sexual assault; prison officials' failure to control or segregate prisoners who endanger the safety of other prisoners and who cause a high level of violence, constitutes "cruel and unusual punishment. A law was clearly established that required a prison superintendent with knowledge of the pervasive risk of harm to inmates to take reasonable steps to prevent that harm, and, thus, the former prison superintendent did not act in good faith and was not entitled to qualified immunity for liability for violating the prisoners' Eighth Amendment right to reasonable protection from rapes and assaults. (Glades Correctional Institution)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Ryan v. Burlington County, 674 F.Supp. 464 (D.N.J. 1987), cert. denied, 109 S.Ct. 1745. A pretrial detainee rendered quadriplegic by his cellmate, a State prisoner who had been awaiting transfer to a State run facility as a parole violator for 58 days alleged deprivation of a constitutional right in an action against various State and county defendants. The federal district court ruled that pretrial detainees had a constitutional right to be housed separately from known dangerous convicted inmates who posed a threat to their personal security unless physical facilities did not permit their separation and that the detainee could prove a constitutional violation if he could prove at trial that classification was feasible at the county jail. Affirmed 860 F.2d 1199. (Burlington County Jail, New Jersey)

State Supreme Court
WRONGFUL DEATH

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Turner v. Miller, 679 F.Supp. 441 (M.D. Pa. 1987). The United States was not liable under the Federal Tort Claims Act for the alleged negligence of federal prison guards in allowing a prisoner to be assaulted. The prisoner alleged that he had warned guards that he was in danger and that he should not be placed in a holding cell with other inmates. However, the guards stated that they were not aware of any need for additional protection for the prisoner, and the prisoner never alleged that he had expressed any specific concerns for his safety in relation to any particular inmate. (U.S.P., Lewisburg, Pennsylvania)

1988

U.S. District Court
PRISONER ON
PRISONER
ASSAULT
STAFFING

Alvarez Kerkado v. Otero de Ramos, 693 F.Supp. 1366 (D.Puerto Rico 1988). The representatives of an inmate who was murdered by other inmates filed a civil rights action against prison officials. On the defendants' motion for summary judgment, the district court, granting the motion, found that the prison officials were entitled to qualified immunity from a civil rights claim where allegations of the complaint referred to conditions which were either beyond their control or, if within their control, which they took every measure to alleviate, notwithstanding the officials' knowledge of a seriously deficient system. Allegations that the prison officials were aware of overcrowding not only in the inmate's correctional institution, but in the total corrections system, lack of penal personnel, and limited economic resources as well as a court decree and prior law, were not sufficient to warrant a finding of deliberate indifference precluding the assertion of qualified immunity by prison officials against claims that the officials acted with deliberate indifference or reckless disregard to the safety of an inmate who was murdered by other inmates after he was removed from voluntary isolation. (Rio Piedras State Penitentiary, Puerto Rico)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER SUICIDE

Boyd v. Harper, 702 F.Supp. 578 (E.D. Va. 1988). Action was brought under a civil rights statute against custodial officials for the suicide of a pretrial detainee. On the defendants' motions for summary judgment, the district court found that in order for the suicide of a prisoner or pretrial detainee to form a basis for a civil rights cause of action against the custodial official, it is necessary to prove that the official was deliberately indifferent to the suicidal state of the prisoner or detainee. Deliberate indifference may be manifested in one of three ways: by showing that the defendant knew about the suicidal tendencies and was deliberately indifferent to the prisoner's or detainee's condition in light of such knowledge; by showing that the defendant was deliberately indifferent to discovering any potential suicidal tendency; or by showing that the defendant's conduct could be considered deliberately indifferent to the possibility of suicide even with no specific knowledge of the prisoner's or detainee's condition.

No deliberate indifference on the part of custodial officials was established with respect to the suicide of the pretrial detainee, so as to provide a basis for civil rights cause of action. Even if officials had previously been informed that the inmate was weeping in his cell or of the fact that the official who had conducted the classification interview had not received proper training, such allegations showed at most merely negligent conduct on the part of the sheriff and the staff of a correctional center. The jail officials' providing the pretrial detainee with a safety razor did not provide a basis for a civil rights claim on the theory of deliberate indifference to the possibility of a suicide, where superficial injuries to the detainee's wrists inflicted with the safety razor were not the cause of his death, which resulted instead from asphyxia by hanging. (Petersburg Correctional Center, Virginia)

State Appeals Court
MEDICAL CARE

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

U.S. Appeals Court
USE OF FORCE
WRONGFUL DEATH

Clark v. Evans, 840 F.2d 876 (11th Cir. 1988) A civil rights action was brought, based on the fatal shooting of a prisoner who was attempting to escape from the state prison, against the Commissioner of the State Department of Corrections, the prison warden, the guard who fatally shot the prisoner, and guards who were on yard or in building complex nearby when prisoner attempted to escape. The district court dismissed all claims against all defendants in their official capacities, granted summary judgment for the commissioner and guards located near the prisoner, but rejected qualified immunity defense asserted by the warden and guard who shot the prisoner in their individual capacities. The warden and the guard who shot the prisoner appealed, and the plaintiffs appealed the dismissal of the other defendants. The appeals court held that: (1) a reasonable officer could have believed that the guard's actions in shooting the prisoner were lawful, and accordingly, the guard was entitled to qualified immunity for use of deadly force; (2) the commissioner was not liable on theory he had instituted and perpetuated a policy that committal orders of state court judges would be ignored and that the prisoner's death occurred as a direct result of the prisoner not having been transferred to a mental hospital pursuant to involuntary commitment order, and (3) nearby guards were not liable on the theory that they were deliberately indifferent to a prisoner's safety or serious medical needs.

The court noted that, in determining whether a state prison guard who fatally shot a prisoner who was attempting to escape was entitled to qualified immunity in a civil rights action based on the shooting, the proper inquiry was not whether escape could reasonably have been prevented in a less violent manner, but rather, whether a

reasonable officer with information available to the guard who shot the prisoner could have believed that less violent means were not reasonably available (see Anderson v. Creighton, 107 S.Ct. 3034 (1987). (Georgia State Prison)

U.S. Appeals Court
PRISONER SUICIDE
WRONGFUL DEATH

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM
WRONGFUL DEATH

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

State Appeals Court
PRISONER ON
PRISONER
ASSAULT
JUVENILES

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

U.S. Appeals Court
MEDICAL CARE
PRISONER SUICIDE
SUPERVISION

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. (Concord City Jail, Concord, California)

U.S. District Court
PRISONER SUICIDE

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

grossly negligent in training its law enforcement officers precluded its liability. (Pike County Jail, Ohio)

U.S. Appeals Court
PRISONER
SUICIDE
SUPERVISION

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
MEDICAL CARE

Geter v. Wille, 846 F.2d 1352 (11th Cir. 1988), cert. denied, 109 S.Ct. 870. Absent a showing that the sheriff's office or jail had policies, customs, or usage relating to events that led to an inmate's death, the inmate's mother could not recover damages from the sheriff and the director of corrections. The inmate died because of physical ailments brought on by weight loss. He had complained of a sore throat and refused to eat or drink. As a result of this, his weight went down from 183 pounds to less than 136 pounds. The inmate had refused to consent to x-rays that were ordered by a doctor who had examined him and had found no medical reason why he could not swallow. The mere right to control without any control or direction having been exercised by the defendants is not enough to support federal civil rights liability. No evidence was presented that either defendant personally participated in incidents which led to the inmate's death. (Palm Beach County Jail, Florida)

U.S. Appeals Court
PROTECTION FROM
HARM

Glick v. Henderson, 855 F.2d 536 (8th Cir. 1988). A civil rights suit was dismissed by a federal trial court alleging failure and refusal of various prison officials to protect inmates from exposure to AIDS, and the dismissal was upheld by the appeals court. The plaintiffs in this case claimed that at least five inmates in the facility have tested positive for the virus which causes AIDS. The inmates also argued that the prison neither tested inmates and personnel for exposure to the AIDS virus nor segregated all those who did test positive. The inmates felt that the combination of these factors, along with the existence of practicing homosexuals within the facility, placed them in immediate danger of contracting AIDS because of the daily interactions which take place among inmates and jail officials. Medical authorities testified that the inmates' complaint was based on "unsubstantiated fears and ignorance," which included allegations that they face a risk of contracting AIDS by: (1) coming into contact with the sweat of other inmates during work detail; (2) being subjected to bites from mosquitoes which have bitten other inmates; (3) being sneezed on by known homosexuals; (4) having food prepared by officials who are not tested for AIDS; and/or (5) the regular transfer of prisoners from cell to cell throughout the facility. The court found that these means are too remote to provide the proper basis for a grievance. These, along with other significant risks, which are not comprehended by medical science as creating a genuine concern for transmission of AIDS, were insufficient to entail court intervention. (Arkansas Department of Corrections)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Goka v. Bobbitt, 862 F.2d 646 (7th Cir. 1988). A former inmate brought a suit against several prison guards and two prison officials under Section 1983 after he was assaulted by another inmate. The U.S. District Court entered a summary judgment in favor of the defendants, and the plaintiff appealed. The appeals court, reversing and

remanding the lower court decision, found that a genuine issue of material fact existed as to whether the guards knew of the risk of harm facing the plaintiff and took any action to prevent that harm, and as to the extent of the defendants' knowledge concerning the enforcement of a tool control policy, precluding a summary judgment. When a correctional officer or prison official intentionally exposes a prisoner to a known risk of violence at the hands of another prisoner, he breaches a duty imposed upon him by the eighth amendment, deprives the prisoner of the security to which he is constitutionally entitled, and subjects himself to a suit under Section 1983. (Stateville Correctional Center, Joliet, Illinois)

U.S. Appeals Court
PROTECTION FROM
HARM
WRONGFUL DEATH
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
OFFICER ON
PRISONER
ASSAULT
BRUTALITY

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
STAFFING

McGhee v. Foltz, 852 F.2d 876 (6th Cir. 1988). An inmate who was stabbed by a fellow prisoner brought a civil rights suit against the warden of the medium security prison alleging a violation of his constitutional right to be free of cruel and unusual punishment under the eighth amendment. Following a bench trial, the U.S. District Court found in the inmate's favor, and the warden appealed. The court of appeals, reversing and remanding with directions, found that evidence did not support the determination that the warden failed to respond to the pervasive risk of harm in prison by providing adequate staffing, so as to constitute deliberate or wanton indifference to the plaintiff's constitutional rights. Evidence in the damage suit against the warden did not support a determination that there was pervasive risk of harm in the prison at the time of the stabbing, even though there had been a recent increase in the number of assaults within the entire prison. A great majority of the assaults did not result in serious injury. There was no evidence that the rate of serious assaults exceeded that of similar prisons, and no evidence that the plaintiff was a member of any identifiable group that had been targeted for an attack. Even assuming there was possible departure from a proper level of staffing in the inmate's cell block at the time of the incident, the warden had no notice or knowledge of any danger to the inmate or of any particular problems in his cell block, and there was no evidence of a pervasive risk of harm to prisoners at the time of the incident. (State Prison of Southern Michigan)

U.S. District Court
RIOT

Marsh v. Barry, 705 F.Supp. 12 (D. D.C. 1988). Jail inmates who were injured in a fire that broke out during a riot brought a civil rights action against the District of Columbia and officials. Judgment in favor of the defendants was reversed by the Court of Appeals, 824 F.2d 1139. The district court found that the riot and fire were caused by overcrowding; the fire was part of the riot; and the riot was foreseeable. The court was faced with the question of whether the disturbance was "directly or indirectly caused by the illegal crowding at the jail." The court noted that "overcrowding, where it exists, may be regarded as at least an indirect cause of all riots that occur in overcrowded institutions" since it is that which makes tempers flare. Even if the "actual catalyst" for the riot is a "discrete event," such as a disagreement among inmates, it would be impossible to say, according to the court, "that where a general disturbance occurs, the overcrowding was not a proximate cause of the anger and the rioting." In this instance, the court held there was uncontradicted evidence in the record, contained in the defendants' own exhibits, which compelled the conclusion that "overcrowding was the actual catalyst for the riot and the fire." (Southwest Housing Unit, District of Columbia Detention Center Jail)

U.S. Appeals Court
FAILURE TO
PROTECT
PRISONER ON
PRISONER
ASSAULT

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. (PA State Prison)

U.S. Appeals Court
PROTECTION FROM
HARM

Parker v. Williams, 855 F.2d 763 (11th Cir. 1988). A former prisoner in a county jail who was kidnapped and raped by a former chief jailer brought a Section 1983 action against the former chief jailer, the county sheriff, the county itself, and individual county commissioners. Claims were also asserted under Alabama tort law. The United States District Court entered judgment on a jury verdict awarding the plaintiff compensatory damages of \$100,000, and punitive damages of \$100,000 against the sheriff and the county. The defendants appealed. The Court of Appeals certified the question to the Supreme Court of Alabama and received a response, 519 So.2d 442. Thereafter, the Court of Appeals initially held that: (1) the sheriff was immune from the state law tort claims; (2) the evidence supported the jury finding that the sheriff acted pursuant to an inadequate employment policy and the policy could fairly be ascribed to the county; (3) the sheriff was not entitled to qualified immunity; and (4) the county could not be held liable for punitive damages. On rehearing, however, the appeals court vacated judgments against the sheriff and the county. 862 F.2d 1471. According to the court, under Alabama law, the county was not vicariously liable for tort claims asserted against the sheriff arising from the chief jailer's kidnapping and rape of a county prisoner, since there was no employer-employee relationship between the county and the sheriff. The sheriff's gross negligence in hiring a chief jailer who kidnapped and raped a county prisoner supported county liability in a Section 1983 action and the jury finding of specific gross negligence evidenced a more general finding that the sheriff's negligent act was traceable to a policy or custom of the county. Based on the theory that the sheriff created an official policy or custom of not performing reasonable background checks of potential jailers or on theory that he was grossly negligent in hiring or in training the chief jailer when he knew or should have known that the jailer was a convicted sex offender with various psychiatric problems, there would have been no reasonable grounds, based on established principles of law, for the sheriff to believe that hiring as the chief jailer, a convicted sex offender with a history of mental problems was a permissible action. (Macon County Jail, Alabama)

State Appeals Court
WRONGFUL DEATH

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. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

State Appeals Court
PRISONER ON
PRISONER
ASSAULT

Taylor v. N.C. Dept. of Corrections, 363 S.E.2d 868 (N.C. App. 1988). A prisoner filed a tort claims action against the State Department of Corrections for injuries he allegedly sustained when sexually assaulted by another inmate in the cell. Evidence that a guard had ignored the prisoner's request not to place other inmate in cell, had subsequently failed to investigate prison unrest in area, and had failed to make regular rounds sufficiently supported findings of negligence in tort claims action arising from

inmate's sexual assault. The failure to make the usual periodic checks for security was found to be a "proximate cause" of the sexual assault and the Department of Corrections was held for \$15,000 in damages. (Harnett Youth Center, North Carolina)

U.S. District Court
STAFFING
PRISON SUICIDE

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER
SUICIDE
STAFFING
SUPERVISION

Vega v. Parsley, 700 F.Supp. 879 (W.D. Tex. 1988). Parents of a juvenile who committed suicide while in a juvenile detention facility brought a civil rights action against the county, the sheriff, and the director of the facility. On the defendants' motion for summary judgment, the district court found that there was no eighth amendment violation with respect to conditions in the facility, including the presence of a shower curtain rod on which the juvenile hung himself. No constitutional violation was shown on the theory that the juvenile was denied treatment. No claim was stated on the theory of failure to staff, train and supervise the facility. No due process violation was established on the theory of summary judgment which caused the juvenile's death; and the defendants were entitled to qualified immunity.

The plaintiffs failed to state a claim of violation of the eighth and fourteenth amendments in the alleged failure of the county, as a matter of official policy, to staff, train and supervise the facility, where the plaintiffs failed to allege or establish what specific areas of training were inadequate or to establish any other specific incident where the prisoner or child committed or attempted to commit suicide, or that any policy or custom of the detention facility caused or contributed to any suicide. Even assuming that the action by the deputy in leaving the juvenile unattended in a cell for 15 or 20 minutes, during which time the juvenile committed suicide, was negligence or gross negligence, the conduct could not be imputed to the county for purposes of

liability under the civil rights statute. Not allowing the parents to visit their juvenile son during the period of two or three hours on the morning following his placement in the juvenile detention facility, during which time he committed suicide, did not rise to a constitutional deprivation. (Gonzales County Detention Facility, Texas)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Walsh v. Mellas, 837 F.2d 789 (7th Cir. 1988), cert. denied, 108 S.Ct. 2832. A federal appeals court found that a state prison's classification and assignment procedures are unconstitutional insofar as they do not even require a review of an inmate's file before assigning him a cell or work partner. A prisoner filed suit after he was assaulted by his cellmate. The court found that in spite of prison officials' awareness of the general risk of gang-related violence against individuals targeted by gangs within the prison, they failed to institute procedures and safeguards in an attempt to determine whether an inmate to be housed with a gang member is targeted by that gang. (Stateville Correctional Center, Illinois)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Williams v. Willits, 853 F.2d 586 (8th Cir. 1988). A prisoner brought civil rights action against guards and prison supervisors. A federal appeals court held that: (1) the complaint did not allege any nexus between alleged overcrowding in prison and a fight between prisoner and inmate, and (2) prison guards did not violate a prisoner's civil rights by failing to break up a fight between him and another inmate where they determined that any effort to intervene would increase the risk because the guards were outnumbered by the inmates in the prison yard where the fight took place. To prove a supervisory liability claim in a civil rights action, a prison inmate was required to demonstrate that prisoners faced a pervasive and unreasonable risk of harm from some specified source and that the supervisor's corrective inaction amounted to deliberate indifference or tacit authorization. A single incident, or isolated incidents, would not ordinarily satisfy that burden. A prison inmate's allegation that a prison guard stood by and watched while he and another inmate engaged in a fight did not state grounds for holding prisoner supervisors liable for any violation of civil rights. (Iowa State Penitentiary)

1989

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Arnold v. Jones, 891 F.2d 1370 (8th Cir. 1989). An inmate sued prison officials to recover for damages suffered when he was beaten by another inmate. The court of appeals held that unarmed corrections officers had no constitutional duty to physically intervene in an assault by one inmate on another, when intervention may cause them serious injury or worsen the situation. The court also ruled that unarmed corrections officers were entitled to qualified immunity with respect to their failure to physically intervene to break up an assault with a pipe by one inmate on another where they did order the assaulting inmate to stop the assault. (Iowa State Penitentiary)

U.S. District Court
WRONGFUL DEATH

Brock v. Warren County, Tenn., 713 F.Supp. 238 (E.D. Tenn. 1989). An action was taken under a federal civil rights statute and the Tennessee wrongful death statute by the children of a prisoner who died from heat prostration. The district court found that the conditions in the cell where the prisoner was housed, including virtually nonexistent ventilation and extremely high temperature and humidity, were cruel and inhumane. The court also found that the failure of the county commissioners and the sheriff to provide even minimal medical training to jail guards or to provide the prisoner who died from heat

prostration with adequate medical care, which might have been simply moving the prisoner, a nondangerous 62-year-old man, to a cooler cell, constituted deliberate indifference to the prisoner's medical needs and were proximate causes of the inmate's death.

The county was liable under a civil rights statute for the prisoner's death from heat prostration, where the county commissioners made no effort despite being warned to rectify excessive heat and lack of ventilation problem in the jail and, specifically, in the cell where the deceased prisoner was housed. The deprivation of the prisoner's constitutional rights was the result of a municipal policy.

The sheriff, who was the chief supervisor in charge of the county jail, could be held vicariously liable under a civil rights statute for the prisoner's death in light of evidence he directly participated in and knowingly acquiesced in the housing of the prisoner in a cell with inadequate ventilation and extremely high temperature and humidity. The sheriff argued that there was nothing he could do to improve the temperature and humidity conditions in a cell where the prisoner died because funds were controlled by the county commission. Remedial steps, subsequently taken, such as the removal of a metal cover and the placement of a large fan in the hallway outside the cell, could have alleviated adverse conditions without requiring any expenditure of money, and the failure to try to improve the conditions could result in the sheriff being assessed \$10,000 in punitive damages for the prisoner's death from heat prostration.

The court awarded the prisoner's children \$100,000 in compensatory damages against the county and the sheriff. (Warren County Jail, Tennessee)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT
AIDS

Cameron v. Metcuz, 705 F.Supp. 454 (N.D. Ind. 1989). An inmate brought a civil rights action against prison officials for their alleged failure to protect an inmate from an attack by another inmate who was diagnosed as having AIDS. On the officials' motion to dismiss, the district court found that there were insufficient allegations of deliberate indifference to state a claim under the eighth amendment, and the state scheme for reporting and preventing the spread of communicable diseases did not create a liberty interest in the inmate subject to due process protections. The medical director, the superintendent, and the general services director at the correctional facility were entitled to immunity under the eleventh amendment for claims against them in their official capacities for money damages for failing to protect an inmate from the attack by another inmate who was diagnosed as having AIDS. (Westville Correctional Center, Indiana)

U.S. Appeals Court
PRISONER
SUICIDE

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

U.S. Appeals Court
PROTECTION FROM
HARM
STAFFING

de Jesus Benavides v. Santos, 883 F.2d 385 (5th Cir. 1989). Jail detention officers who were injured during the course of an attempted escape by jail inmates filed a federal civil rights action against the jail officials. The officers were unarmed and on duty when they were attacked. They claimed that the sheriff was aware of a persistent pattern of contraband smuggling in the jail, that the Drug Enforcement Administration (DEA) had specifically warned the sheriff that a jailbreak was "imminent," and that the sheriff acted "callously and in utter disregard" for institutional security in failing to respond to these problems. They also complained that the commissioners and the judge had failed to provide sufficient funds to the jail to ensure its safe operation. The U.S. District Court dismissed the suit, and the plaintiffs appealed. The appeals court found that the local jail detention officers who were injured by jail inmates that were attempting to escape did not have a Section 1983 action against the government officials in charge of the jail for reckless or grossly negligent failure to prevent, adequately guard against, or protect those injured from an attempted escape and accompanying inmate violence, stating, "The issue presented is whether those who, in the course of their duties as local jail detention officers, are injured by jail inmates attempting to escape, have a second 1983 claim against the government officials in charge of the jail where the injury would not have occurred but for those officials' callous indifference or grossly negligent failure to prevent, or to adequately guard against, or to protect those injured from, the attempted escape and accompanying inmate violence." The claim fell squarely within traditional state tort law and did not give a rise to a constitutional claim. (Webb County Jail, Texas)

U.S. Appeals Court
SUICIDE

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

U.S. Appeals Court
PRISONER
SUICIDE
JUVENILES

Edwards v. Gilbert, 867 F.2d 1271 (11th Cir. 1989). A Section 1983 action was brought by an estate on behalf of a juvenile who committed suicide while in jail. The U.S. District Court denied the officials' motion for summary judgment in regard to counts against them in their individual capacities, and appeal was taken. The appeals court found that the conduct by jail officials in leaving a seemingly sleeping juvenile inmate, who had never threatened or attempted suicide and who had never been considered a suicide risk, in a secure cell for 45 minutes with another sleeping juvenile did not constitute deliberate indifference to the inmate's safety from self-harm. The individual officers were entitled to immunity from a civil rights action against them arising out of the inmate's suicide. The prisoner, who was awaiting sentencing, was not deprived of procedural due process under the fourteenth amendment by the placement in a particular cell or by the jailer's failure to observe him for an interval of more than 15 minutes. There was no contention that the actions of the jailers would have been proper if some sort of hearing had preceded the events surrounding the prisoner's suicide. Statutes and regulations governing the daily operations of county jails did not give the prisoner a right to an administrative hearing.

Jail officials did not demonstrate a deliberate indifference to the prisoner's safety from self-harm by the fact that the prisoner requested an appointment with the jail psychologist but that there was no record that he had seen one. Given the fact that it was not unusual for inmates to request to see a jail psychologist, the prisoner's request did not put jailers on notice that he was a potential suicide risk. It was also stated by the court that the failure of the jailers to adhere to state laws and regulations on the housing of juveniles in adult jails did not demonstrate a deliberate indifference toward the prisoner's safety from self-harm. In addition, standing alone, the violation of state laws and regulations requiring the sight and sound separation of juvenile and adult prisoners was not the basis for establishing a constitutional violation. (Okaloosa County Jail, Florida)

U.S. District Court
MEDICAL CARE

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

U.S. District Court
OFFICER ON
PRISONER
ASSAULT

Wilson 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. District Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Jones v. Hamelman, 869 F.2d 1023 (7th Cir. 1989). An inmate brought a civil rights action against prison officials alleging the officials failed to protect him from an assault by other inmates. The U.S. District Court dismissed the claim after trial on merits, and appeal was taken. The appeals court found that the magistrate did not abuse his discretion in denying a motion for leave to amend the complaint, where the original per se complaint merely contained allegations the prison correctional officers had received notes and verbal pleas that the inmate's life was in danger and that they reacted improperly to the assault when it commenced, the amended complaint sought to include issues concerning prison records, prison administration and policy, and processing and assignment of inmates, and the inmate did not attempt to amend the complaint until 29 months after the filing of the original complaint and less than three months before trial. It was also found by the Court that the magistrate did not abuse his discretion in refusing to allow testimony of another inmate to show modus operandi of the prison guard to aid and abet criminal acts, where the potential inmate witness was not even in or near the prison at the time the inmate was attacked, and thus, had no personal knowledge of the assault. Had the magistrate admitted testimony concerning the guard's asserted indifference, the magistrate would have had to allow the guard not only to cross-examine the inmate, but to call witnesses on his own behalf. The magistrate did not abuse his discretion in refusing to qualify another inmate as an expert witness on prison administration. (State Reformatory, Pendleton, Indiana)

U.S. District Court
MEDICAL CARE

Lopez Morales v. Otero de Ramos, 725 F.Supp. 106 (D. Puerto Rico 1989). An inmate's mother brought an action against prison officials to recover for violations of the right to motherhood and the eighth amendment arising out of the death of the inmate due to status asthmaticus. The defendants moved for summary judgment. The district court found that the mother inadequately alleged the officials' personal involvement or causal nexus between the officials' actions and the death; no right to motherhood exists under the due process clause; and officials did not violate the eighth amendment. The prison officials who transferred the inmate to penal camp with alleged knowledge of his asthma condition did not deliberately deny necessary medical treatment and did not violate the eighth amendment. The inmate visited the medical area at the camp and visited the hospital; and plaintiff, the inmate's mother, did not allege that the inmate was turned away when he requested medical treatment or that he was given inadequate services. The plaintiff has also failed to allege a deprivation of a federally protected constitutional right required in a Section 1983 action. The plaintiff claims that as a result of Mr. Lopez' death she was deprived of the decedent's love, companionship and affection in violation of her "right to motherhood" under the fourteenth amendment. However, neither the Supreme Court nor the first circuit have recognized a constitutional right to motherhood. (La Pica Penal Camp, Jayuya, Puerto Rico)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

McGill v. Duckworth, 726 F.Supp. 1144 (N.D. Ind. 1989), modified, 944 F.2d 344. An inmate brought an action against prison officials and a prison guard after he was attacked by another inmate. Following judgment for the inmate, the defendants moved for judgment notwithstanding a verdict, for a new trial, or for an amendment of the judgment. The district court found that evidence that the inmate previously had engaged in homosexual activity was properly excluded. The jury instructions containing an objective standard for determining the defendants' recklessness was proper. The evidence was sufficient for a reasonable jury to determine that the defendants were both indifferent to the inmate's safety needs and negligent; and the court had insufficient information to determine whether an award of damages was duplicative. In the inmate's action, the trial court properly took judicial notice of a statute specifically requiring the Indiana Department of Corrections to maintain accurate records regarding incidents of violence, inasmuch as the statute was pertinent to the evidence before the jury and to the inmate's "reign of terror" theory. The mere lack of due care by the prison in preventing the attack on the inmate does not give a rise to liability under Section 1983. The appeals court subsequently found that the defendants could not be held liable. (Indiana State Prison)

U.S. District Court
OFFICER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Policano v. Koehler, 715 F.Supp. 598 (S.D.N.Y. 1989). An inmate claimed that another prisoner stole his cosmetics and, later on the same day, together with other prisoners, assaulted and robbed him of his watch and gold chain. Both incidents were perpetrated by inmates from another housing area who were not supposed to be in his housing area, according to prison regulations. The inmate sued prison officials, claiming that the incidents resulted from their negligence because the corrections officer on duty was reading a newspaper at the time the alleged acts occurred. The court dismissed the inmate's federal civil rights lawsuit, finding that mere negligent failure to provide adequate security does not state a claim for violation of constitutional rights. (Rikers Island House of Detention for Men, New York)

U.S. District Court
SUPERVISION
PRISONER SUICIDE

Popham v. City of Talladega, 742 F.Supp. 1504 (N.D. Ala. 1989). A widow of a repeat prisoner who hung himself in jail brought an action against the jailers and city officials claiming a violation of the prisoner's constitutional rights. On the defendants' motion for summary judgment, the U.S. District Court found that the jail officials were entitled to qualified immunity in their individual capacities; even if the jailers violated state regulations, statutes or departmental procedure regarding jail staffing or observation of prisoners, the jailers' conduct did not constitute deliberate indifference to the prisoner's safety from self-harm and a reasonable officer in each of the jailers' positions could have believed that he was acting consistently with the constitution. The court also found that the city officials were entitled to qualified immunity in their official capacities, inasmuch as there was no evidence upon which to base a finding that any officials acted with deliberate indifference to the prisoner's taking of his own life or that there was any indifferent training, policy or custom which caused the prisoner's death. (Talladega Police Department, Alabama)

U.S. District Court
PRISONER SUICIDE

Rellergert v. Cape Girardeau County, Mo., 724 F.Supp. 662 (E.D. Mo. 1989). A civil rights action was brought against a sheriff and jailor following the suicide of an inmate. Following a judgment in favor of the plaintiffs, the defendants moved for a judgment notwithstanding the verdict. The district court granted the motion, and found that the sheriff and jailor were entitled to qualified immunity with respect to the civil rights action arising out of the suicide of the inmate, even though he stated on his medical history sheet that he had attempted suicide. They placed him in a common area where he could be kept under observation, where his normal conduct was unchanged since his prior incarceration a month earlier, and where he was observed going to the bathroom shortly before he hung himself. He had no sheet or bedding with him and it was unclear where the sheet with which he hung himself had been acquired. The court found that the defendants had taken reasonable steps to protect this inmate against suicide--in fact "they did everything they could" to protect the inmate from himself. "There were no facts to

suggest the defendants had an evil intent or motive to allow" the inmate to harm himself "nor were the defendants callously indifferent to his needs. Rather, they took affirmative action to monitor him almost constantly." The mere fact that monitoring equipment had not also been installed in the bathroom did not constitute deliberate indifference. (Cape Girardeau Jail, Missouri)

U.S. District Court
WRONGFUL DEATH

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

U.S District Court
PRISONER ON
PRISONER
ASSAULT

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

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

U.S. Appeals Court
COURT COSTS
TRANSPORTATION

Sales v. Marshall, 873 F.2d 115 (6th Cir. 1989). An inmate brought a civil rights action against a correctional facility claiming that his constitutional right to proper medical care was infringed. The U.S. District Court dismissed the action and granted costs to the state correctional facility, and the inmate appealed. In a separate case, another inmate brought a civil rights action against the county and the county officials charging the defendants with various constitutional violations. The U.S. District Court entered a judgment in favor of the defendants and denied the state correctional facility's motion to intervene or to be joined, and the state correctional facility appealed. After consolidation, the appeals court found that the state correctional facility was not entitled to recover from an inmate costs of transporting an inmate to court in response to a writ of habeas corpus ad testificandum which was issued in connection with the inmate's civil rights action. The indigent inmate, whose civil rights action against the state correctional facility was dismissed, could be held liable for deposition costs provided he had the ability to pay the costs assessed; and the intervention application filed by the state correctional facility was untimely. The judgment in the first case was reversed in part, vacated in part and remanded; the judgment in the second case was affirmed. (Southern Ohio Correctional Facility)

State Supreme Court
WRONGFUL DEATH

Sheerin v. State, 434 N.W.2d 633 (Iowa 1989). A wrongful death action was brought against the State for a fatal stabbing of a co-worker by a paroled prisoner. The district court granted summary judgment to the State, and the plaintiff appealed. The state supreme court, affirming the decision, found that the State's decision to parole the prisoner was a discretionary function immunized from liability by a statute, rather than an operational function for which the State could be held liable if the function were negligently undertaken. The State could not be held liable for the death of a co-worker stabbed by the paroled prisoner on the theory that the State negligently failed to adequately supervise or provide for the continuing treatment and evaluation of the

prisoner following his release from prison and a halfway house. The court also found that the State did not have a duty to warn persons who would come in contact with the paroled prisoner, including the co-worker who was fatally stabbed, the employer or the general public, of the danger posed by the paroled prisoner, for purposes of imposing liability on the State for the death of the co-worker. (Iowa)

U.S. District Court
PRISONER SUICIDE

Snyder v. Baumecker, 708 F.Supp. 1451 (D. N.J. 1989). The administratrix of an inmate's estate brought an action against various state and county officials and the inmate's attorney after the inmate committed suicide while incarcerated. The allegations of the administratrix of the inmate's estate concerning the inmate's suicide death while incarcerated in the county jail were insufficient to state civil rights claimed against the county and county officials. Although the administratrix claimed that officials failed to take sufficient steps to prevent the inmate's suicide, the inmate was placed in segregation, provided with psychiatric care and placed under suicide watch, making his death at most a result of negligence, not deliberate indifference to his needs. Under New Jersey law, the attorney could not be held liable for the client's suicide on the theory of legal malpractice; although the suicide was allegedly caused by the attorney's delay in prosecution of his criminal defense and the failure to visit the client during the time he was incarcerated pending trial on criminal charges, the suicide was not a foreseeable risk of malpractice. The attorney could, however, be held liable on the theory of legal malpractice for emotional distress suffered by the client as a result of his loss of liberty caused by the attorney's alleged negligent representation, if it could be shown that the client would have obtained his release from prison "but for" the attorney's alleged legal malpractice. (Hunterdon County Jail, New Jersey)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Taylor v. Green, 868 F.2d 162 (5th Cir. 1989), cert. denied, 110 S.Ct. 127, 110 S.Ct. 761. A state inmate brought an action for damages against various prison officials, alleging the defendants violated his rights by causing three "Support Service Inmates" to attack and seriously injure him. The U.S. District Court entered a judgment jury verdict awarding punitive but no compensatory damages to the inmate, and the inmate appealed. The appeals court found that the inmate was not entitled to a new trial; the court could not add to the amount of the verdict either compensatory or punitive damages; and the inmate was entitled to nominal damages. The jury awarded punitive damages of \$200 from each of the defendants, but no compensatory damages. On appeal, the court upheld the jury verdict but also awarded the inmate nominal damages of \$1. (Texas Department of Corrections)

U.S. Appeals Court
PRISONER
SUICIDE
SUPERVISION
STAFFING

Williams v. Borough of West Chester, Pa., 891 F.2d 458 (3rd Cir. 1989). The estate of an arrestee who committed suicide by hanging after jailing officers failed to remove his belt sued officers and the city police department under the federal civil rights statute. The U.S. District Court entered a judgment for the officers and municipality and the estate appealed. The appeals court, affirming the decision, found that the officers placing the arrestee in a cell lacked the knowledge of his suicidal tendencies. The dispatcher was not responsible for the suicide, as he had no prisoner care responsibilities; and the municipality was not liable, as none of the individual officers were liable. A man and his twin brother were arrested in a store--one of them for suspected shoplifting and the other for allegedly threatening people in the store and re-entering the store after being told not to do so. Officers at the station placed each man in a separate cell. They failed to remove the belt of the man with suicidal tendencies. Of the three officers present, one then went off duty, one went out for dinner, and a dispatcher stayed at his station answering the radio and the phone. While the dispatcher heard noises coming from the cell area, he did not check the cell block. When the other officer returned from dinner, he discovered that the detainee had hung himself with his belt. (West Chester Police Department, Pennsylvania)

1990

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Bailey v. Wood, 909 F.2d 1197 (8th Cir. 1990). An inmate who had been assaulted by another inmate brought a civil rights action against the warden for allegedly subjecting him to cruel and unusual punishment contrary to the eighth amendment. The U.S. District Court entered judgment in favor of the prisoner and the warden appealed. The court of appeals held that the warden took reasonable steps to prevent the assault and was not "deliberately indifferent" to the prisoner's rights, reversing the lower court decision.

According to the court, vicarious civil rights liability could not be imposed on the warden for a guard's negligence and possible deliberate indifference to the inmate's right to be free from violent attacks. The guard left his post, permitting a prisoner who had previously been involved in altercations with the inmate to enter the inmate's cell and stab him with a homemade weapon. To make out an eighth amendment claim against the warden, the prisoner had to show that the warden was "deliberately indifferent" to his rights, i.e., that the warden either intentionally deprived the prisoner of rights or acted in reckless disregard of rights.

To establish that the warden acted in "reckless disregard" of eighth amendment rights, the prisoner had to show that he was faced with pervasive risk of harm and that the warden failed to reasonably respond to that risk. According to the court, the warden took reasonable steps to respond to threats which the prisoner faced from another inmate by transferring the inmate to a complex at the other end of the prison, and was not "deliberately indifferent" to the prisoner's rights, within the meaning of the eighth amendment, merely because he failed to anticipate that the guard would leave his post and permit the inmate to gain access to the prisoner's cell. The court noted that "... this case is one of an increasing number involving an assault by one prisoner on another in a state prison." (Minnesota Correctional Facility, Oak Park Heights, Minnesota)

U.S. Appeals Court
PRISONER SUICIDE

Belcher v. Oliver, 898 F.2d 32 (4th Cir. 1990). A civil rights action was brought against the city, mayor, chief of police, and police officers, by the daughter of a pretrial detainee who committed suicide with a belt while detained at the city jail on charges of public intoxication and hazardous driving. Reversing and remanding the lower court decision, the U.S. Circuit Court of Appeals found that the general right of pretrial detainees to receive basic medical care does not place upon jail officials the responsibility to screen every detainee for suicidal tendencies. The officers' failure to afford medical screening or attention to the detainee did not violate constitutional standards. There was an absence of evidence that indicated to the officers that the detainee posed a risk of suicide. It was also established that the failure of the police officers to remove the detainee's belt and shoelaces did not reach a level of "deliberate indifference," and therefore the officers were entitled to qualified immunity. (Clendenin City Jail, WV)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM

Berry v. City of Muskogee, 900 F.2d 1489 (10th Cir. 1990). The widow of an inmate who was killed by fellow inmates brought a civil rights action against the city. In vacating and remanding the district court's decision, the appeals court stated that eighth amendment standards, rather than due process standards that are applicable to pretrial detainees, apply to incarcerated persons whose guilt has been adjudicated formally but who await sentencing. The safety and bodily integrity of a convicted prisoner implicates both the eighth amendment's prohibition against cruel and unusual punishment and the fourteenth amendment's substantive protection against state deprivation of life and liberty without due process of law. The City cannot absolutely guarantee the safety of its jailed prisoners, but it has a constitutional duty to take reasonable steps to protect the prisoners' safety and bodily integrity. A municipality is liable under Section 1983 if there is a direct causal connection between the municipality policies in question and the constitutional deprivation. (Muskogee City-Federal Jail, Oklahoma)

U.S. District Court
OFFICER ON
PRISONER
ASSAULT
USE OF FORCE

Cawthon v. City of Greenville, 745 F.Supp. 377 (N.D. Miss. 1990). Plaintiffs brought a suit against a city under Section 1983, alleging their constitutional rights were violated pursuant to municipal policy when they were assaulted by a desk sergeant after they were brought to the station to be booked on various misdemeanor charges. On the defendant's motion for summary judgment, the U.S. District Court found that the city could not be held liable under Section 1983 for the desk sergeant's assault on the arrestees, based on the assertion that the city knew of the sergeant's alleged propensity for violence, yet failed to take sufficient steps to protect the public, absent evidence of deliberate indifference on the part of the city. Through the police chief, the city consistently implemented reasonable safeguards to respond to each new bit of information it received about the sergeant, and although the chief underestimated the sergeant's irascibility, his error did not rise to a level of deliberate indifference. The police chief's failure to deliver a more adequate reprimand to the desk sergeant on a prior occasion could not be construed as a conscious policy decision, custom or practice which could be the basis of municipal liability. It was also found that the failure of witnessing officers to intervene to prevent the desk sergeant's use of excessive force against arrestees, and the police chief's later failure to issue reprimands for that passivity did not establish a police department practice of abusing or tolerating excessive force against the general public, sufficient to constitute a municipal custom, for purposes of Section 1983 liability. Though the officers did not physically confront the desk sergeant, who was a superior officer, one officer shouted his disapproval of the desk sergeant's actions and several others immediately went to the radio room to summon the lieutenant. (Greenville Jail, Mississippi)

U.S. District Court
FAILURE TO
PROTECT

Dimas v. County of Quay, New Mexico, 730 F.Supp. 373 (D.N.M. 1990). A prisoner was placed on a work release program. Two days later, he allegedly raped a woman. The woman filed a law suit alleging that the county and its sheriff violated her rights to substantive due process and deprived her of her liberty without due process of law. The federal court granted the defendants summary judgment on the civil rights claims, finding the failure to protect a member of the public from assault by a third party is not a violation of due process in the absence of a custodial relationship with the victim. The principle of this case, the court held, applied in the circumstances of the alleged rape of the plaintiff. Although the plaintiff introduced evidence that she had previously dated the prisoner, there was no evidence that the defendants should have known of his relationship or that they could have inferred a special danger to her from that relationship. (Quay County Jail, New Mexico)

U.S. District Court
SUICIDE

Elliott v. Cheshire County, N.H., 750 F.Supp. 1146 (D. N.H. 1990). The father of a pretrial detainee who committed suicide in his cell brought a civil rights action against the county and jail officials. On defendants' motions for summary judgment, the district court found that the jail officials did not act with deliberate indifference to the pretrial detainee's serious medical needs when they failed to diagnose his mental condition as potentially suicidal or prevent his suicide, entitling them to qualified immunity; there was no evidence that the officials were given actual notice of the detainee's need for special care or for protection or that their failure to act placed the detainee in any serious danger. The arresting officer who knew that the pretrial detainee had a history of mental illness did not act with deliberate indifference to the detainee's medical needs when he failed to recommend immediate treatment to prevent suicide, entitling him to qualified immunity; the officer did not know that the detainee had suicidal tendencies, and had never witnessed any violent behavior by him. It was also found that the county's alleged inadequate training of jail officials in dealing with suicide risk inmates did not amount to deliberate indifference to the rights of the inmates, precluding the county from being held liable. Although there had been other suicides and attempted suicides in the jail in the previous ten years, the county had implemented suicide prevention procedures and there was no evidence that better training in suicide prevention would have alerted the jail officials that the detainee was a suicide risk. (Cheshire County House of Corrections, New Hampshire)

U.S. Appeals Court
OFFICER ON
PRISONER
ASSAULT

Gaudreault v. Municipality of Salem, Mass., 923 F.2d 203 (1st Cir. 1990), cert. denied, 111 S.Ct. 2266. A pretrial detainee brought an action against arresting officers, the city, the mayor, the city solicitor, the police chief, and others to recover for alleged failure to protect. The U.S. District Court entered summary judgment against the detainee, and he appealed. The court of appeals found that evidence established that the defendant police officers had no realistic opportunity to prevent another officer's attack on the arrestee in the police station booking room that was over in a matter of seconds and, therefore, the defendant officers did not violate the Fourth Amendment. (Salem Police Station, Salem, Massachusetts)

U.S. Appeals Court
SUICIDE

Greason v. Kemp, 891 F.2d 829 (11th Cir. 1990). The personal representatives of a Georgia prison inmate who committed suicide filed a civil rights action against prison officials who were responsible for his custody and those who provided his mental health care alleging deliberate indifference to his psychiatric needs. The U.S. District Court denied the defendant's motion for a summary judgment on the grounds of qualified immunity, and the defendants appealed. The appeals court affirmed the lower court decision finding that, at the time of the inmate's suicide, legal precedent clearly established that the eighth amendment protected inmates from deliberate indifference to psychiatric needs. The court also found that jury questions existed as to whether the conduct by both the mental health officials and the supervisory prison officials constituted deliberate indifference to the inmate's mental health needs, precluding a summary judgment on the issue of qualified immunity. Evidence created a question of fact as to whether the mental health center's psychiatrist provided grossly inadequate psychiatric care to the inmate and that he realized he was doing so at the time precluding a summary judgment for the psychiatrist on the grounds of qualified immunity. After the first brief visit with the inmate, the director abruptly discontinued the inmate's antidepressant medication without reviewing the inmate's clinical file or conducting a mental status examination which would have revealed the inmate's extensive history of mental illness and numerous hospital admissions for psychiatric reason. It also contained reports stating that the inmate would pose a substantial suicide risk without the antidepressant medication. (Georgia Diagnostic and Classification Center)

U.S. District Court
SUICIDE ATTEMPT

Hamlin v. Kennebec County Sheriff's Dept., 728 F.Supp. 804 (D.Me. 1990). A pretrial detainee who had attempted suicide at the county jail brought a pro se civil rights suit against the county sheriff and others. On defense motions to amend and for summary judgment, the district court found that the officers who were on duty at the county jail on the night of the pretrial detainee's suicide attempt were necessary parties for adjudication of the civil rights suit, and thus would be joined as defendants and added as moving parties on the defense motion for summary judgment. The alleged conduct of the county sheriff and the officers on duty at the county jail on the night of the pretrial detainee's suicide attempt in allowing the detainee to keep the laces of his boots, which the detainee used in an attempt to hang himself, was at most negligent and did not rise to a level of constitutional violation, even though the jail policy required the removal of the laces and the detainee was arrested for driving while intoxicated. The guard at the jail asked the detainee to remove the boot laces, the laces were difficult to remove and the guard said they would have to be cut. The detainee objected on the grounds of cost, and another guard said that they should admit the detainee with the boot laces because he had been there before and would not "try anything." The plaintiff alleged that he suffered severe physical and emotional distress as a result of his suicide attempt at the Kennebec county jail.

The court stated, "It is plain that the defendants decided to deviate from their standard procedure in processing jail admittees only after the plaintiff himself had expressed concern for the cost to him of replacing the boot laces and another guard had offered her opinion that based on her knowledge of the plaintiff he did not represent a suicide threat. The plaintiff had not alleged that he manifested any suicidal tendencies, and clearly at the time of the incident the plaintiff was rational enough to express concern over the price of the laces. If it represents any breach of the standard of care owed pretrial detainees, the defendants' conduct, based on an informed opinion of the plaintiff's state of mind by one of their colleagues, is negligence, and it does not rise to the level of a constitutional violation". (Kennebec County Jail, Maine)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Hughes v. Savell, 902 F.2d 376 (5th Cir. 1990). An inmate sued a security officer and the warden of a penitentiary for constitutional violations under Section 1983. The inmate also raised pendent state claims for negligence against both defendants. The U.S. District Court entered a judgment on a jury verdict awarding the inmate \$1,750, based on the jury's conclusion that the guard negligently failed to protect the plaintiff from an attack by another inmate, and the defendants appealed. The appeals court, reversing and remanding with instruction, found that the eleventh amendment barred the inmate's state law negligence claim against the guard. Louisiana law required that the guard be sued as an agent of the state. (Louisiana State Penitentiary)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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
PRISONER
SUICIDE

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

U.S. District Court
PRISONER
SUICIDE

McDay v. City of Atlanta, 740 F.Supp. 852 (N.D. Ga. 1990). The daughter of an arrestee who committed suicide brought a civil rights action against the city and police officers. The district court found that there was no basis for imposition of liability on the city or police chief and at the time of the arrest in 1986, the police officers were not deliberately indifferent to the needs of the pretrial detainee even though they left him in a position where he was able to obtain a gun and kill himself. He had never previously attempted suicide or threatened suicide on the night of his arrest. In the absence of any allegation that the arrestee had attempted suicide previously or that he was threatening suicide on the night he was arrested, police officers were not deliberately indifferent in their treatment. Gross negligence is not a ground for imposing municipal liability for failure to train. (Homicide Task Force Office, Somerset Terrace, Georgia)

U.S. Appeals Court
BRUTALITY
OFFICER ON
PRISONER
ASSAULT

McHenry v. Chadwick, 896 F.2d 184 (6th Cir. 1990). An inmate brought a civil rights action against correctional officers alleging that they assaulted him. The U.S. District Court entered a judgment in favor of the inmate, and the correctional officers appealed. The appeals court affirmed the decision and found that it was not necessary that the inmate suffer severe injury for the

correctional officers' infliction of unnecessary and wanton pain on him to amount to an eighth amendment violation. Evidence supported a claim that correctional officers breached a duty to protect the inmate from other correctional officers' assault. It was also found that evidence that correctional officers did not conduct an investigation as to allegations made by fellow inmates who "checked in" to protective custody allegedly to avoid the plaintiff inmate was admissible in the inmate's civil rights action against the correctional officers claiming he was assaulted by police officers. The evidence was relevant to the issue of whether the officers acted willfully and maliciously in their treatment of the inmate which would have subjected them to liability for punitive damages. (Brushy Mountain Penitentiary, Petros, Tennessee)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Mullen v. Unit Manager Weber, 730 F.Supp. 640 (M.D. Pa. 1990). A prison inmate filed a Bivens claim against prison officials, alleging that he was assaulted by fellow inmates after his repeated requests for a transfer to another unit were denied. Prison officials moved to dismiss or for summary judgment. The district court found that prison officials did not act with deliberate or reckless indifference or callous disregard when they denied the inmate's transfer request. The inmate had to prove intentional conduct, deliberate or reckless indifference to his safety, or callous disregard on the part of the prison officials, not bad faith on the officials' part, in order to prevail on a Bivens action. Although the inmate indicated to officials that he feared for his life, he did not disclose the identity of the alleged perpetrators or indicate that they threatened him and the inmate's exclamation of fear, without more information, could lead officials to deduce that the inmate was attempting to manipulate the transfer. (U.S.P.- Lewisburg, Pennsylvania)

U.S. Appeals Court
PRISONER
SUICIDE

Popham v. City of Talladega, 908 F.2d 1561 (11th Cir. 1990). The administratrix of the estate of a deceased jail inmate brought a civil rights action against the city and jail officials. During the celebration of his wedding, Ronald Popham was arrested for public intoxication. In addition to being intoxicated, he was emotional, depressed, and angry at the time of his arrest. Popham's belt, shoes, socks, and pocket contents were removed by jail personnel who placed him in a holding cell and at 9:30 p.m., ordered the cell monitored. Monitoring was accomplished by closed circuit television located on another floor of the jail where the camera was operated by a radio dispatcher. Popham was last checked on physically when the shift ended at 11:00 p.m., after which there were no guards or jailers on duty. Sometime later, in a small space within the cell unviewed by the camera, Ronald Popham hanged himself from the bars by his blue jeans. He was discovered at 5:15 a.m. Christmas morning.

Mrs. Popham claimed several constitutional violations, in effect, that her husband had a right to be protected from committing suicide while incarcerated, that he was not properly monitored after being placed in a cell by himself, and that his jailers were not properly trained to identify prisoners who might show a tendency to suicide.

The U.S. District Court denied relief and the administratrix appealed. The appeals court affirmed the decision and found that evidence did not show a deliberate indifference by jailers to the inmate where they were unaware of any suicidal tendencies. Because jail suicides are analogous to the failure to provide medical care, deliberate indifference is the barometer by which suicide cases involving convicted prisoners as well as pretrial detainees are tested. The deliberate indifference standard applicable to civil rights actions arising out of jail suicides requires a strong likelihood, rather than a mere possibility, that the self-infliction of harm will occur, and deliberate indifference will not be found to exist in the face of only negligence. The failure to train jail personnel to screen detainees for suicidal tendencies did not provide a basis for imposing civil rights liability following the inmate's suicide. Standard procedures followed by the jail inmate's custodians prior to the inmate's suicide, which included the removal of shoelaces, belts, socks, and pocket contents, as well as closed circuit cell monitoring, demonstrated a lack of deliberate indifference to his safety, even though the closed circuit camera could not pick up every corner of his cell. (Talladega City Jail, Alabama)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Redman v. County of San Diego, 896 F.2d 362 (9th Cir. 1990). A pretrial detainee who was raped during confinement brought a Section 1983 action against the sheriff, the supervisor of the detention facility, the second in command at the facility, the shift supervisor, the station deputy, and the county. The U.S. District Court directed a verdict in favor of the defendants, and the detainee appealed. The court of appeals affirmed the lower court decision and found that the jail officials were not deliberately indifferent to the detainee's due process right to personal security. Transferring the 18-year-old pretrial detainee from the "young and tender" unit to a cell with a homosexual and investigating an alleged rape of the detainee by questioning him in front of the cellmate and other inmates was not "deliberate indifference" to the detainee's due process right to personal security, even though the jail officials knew that the cellmate had a history of trying to coerce others into sexual favors. The knowledge about the cellmate and the detainee's profile merely gave jailers a suspicion of a possible attack. (San Diego County's South Bay Detention Facility, California)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Reed v. Dunham, 893 F.2d 285 (10th Cir. 1990). Inmates appealed from an order of the U.S. District Court dismissing their civil rights action against prison officials. Two inmates sued a number of correctional officials and officers for federal civil rights violations arising out of an assault on them by other inmates. One of them was evidently restrained at knifepoint while the other was stabbed four times. The appeals court, affirming in part, vacating and remanding in part, found that the inmates' allegation that a corrections officer failed to come to their aid during a prison altercation was not sufficient to state a civil rights claim, but the inmate's allegation that prison staff delayed for nearly two hours in providing him with medical attention after he was stabbed by another inmate was sufficient to state a claim against prison officials for a deliberate indifference to serious medical needs. The correctional center staff waited approximately one hour to transport him to a local medical facility, where he was not treated for forty-five minutes. The "credible allegation of an as yet inadequately explained delay of nearly two hours in the provision of full medical treatment for apparently serious stab wounds is clearly not frivolous," and was allowed to proceed. (Stringtown Correctional Center, Oklahoma)

U.S. District Court
OFFICER ON
PRISONER
ASSAULT

Rembert v. Holland, 735 F.Supp. 733 (W.D.Mich. 1990). An inmate brought a civil rights action against corrections officers, alleging that they twice subjected him to cruel and unusual punishment in violation of the eighth amendment. On the corrections officers' motion for summary judgment, the district court granted the motion, finding that the corrections officer's alleged sexual demands and alleged assaultive behavior when the inmate failed to comply with the demands could not be made under color of state law, and the inmate's uncorroborated allegations that corrections officers pushed, punched, and kicked him for five minutes could not be a basis for recovery under the circumstances. The fact that an officer is on or off duty or in or out of uniform is not controlling in determining whether an action is taken under color of state law. It is the nature of the act performed which must be scrutinized and which determines whether an officer acted under color of law. The trial court stated that the actions of public employees in the pursuit of their "personal, private pursuits" fall outside of 42 U.S.C.A. Section 1983. The fact that an officer is on or off duty is not controlling, it is the nature of the act performed. While the officer's alleged sexual demands and alleged retaliatory act of throwing feces and urine at the plaintiff may "shock the conscience" and be characterized as the "unnecessary and wanton infliction of pain," he acted only in "pursuit of personal, not governmental interests." That defendant (now deceased) was therefore entitled to summary judgment on the civil rights claim. (State Prison of Southern Michigan)

U.S. District Court
PRISONER
SUICIDE

Simmons v. City of Philadelphia, 728 F.Supp. 352 (E.D. Pa. 1990). A civil rights and negligence action was brought against the city and attending officer by the estate of an intoxicated detainee who committed suicide. On the defendants' motions for post trial relief, following the jury verdict in favor of the estate, the district court denied the relief, finding that the evidence was sufficient to support a finding that the city violated the detainee's civil rights; the jury verdict was not inconsistent. The city waived its governmental immunity. It was also found that a postsuicide photograph of the detainee was admissible. The finding that the city was deliberately indifferent to serious medical needs of an intoxicated detainee, and thus liable under Section 1983 when the detainee committed suicide, was sufficiently supported by evidence that the detainee was at a high risk to commit suicide, that his suicide was foreseeable and preventable, that the attending officer had no training in suicide prevention, and that the police department had been informed of alternative arrangements it could have made which would have reduced the risk of the detainee's suicide. (City's Sixth Police District, Pennsylvania)

U.S. Appeals Court
OFFICER ON
PRISONER
ASSAULT
USE OF FORCE
MEDICAL CARE

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

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Small v. Weekly, 749 F.Supp. 1052 (D. Colo. 1990). An inmate brought an action against corrections officers who allegedly failed to protect him from attack by another inmate. On the officers' motion for summary judgment, the U.S. District Court found that the corrections officers were entitled to qualified immunity with regard to the inmate's claim that they recklessly or deliberately disregarded the inmate's Eighth and Fourteenth Amendment rights when they failed to protect him from the attack, absent evidence that the officers knew or reasonably should have known that their actions in sphere of their official responsibility violated the inmate's rights or that they acted with malicious intention to cause deprivation of rights or other injury. (Centennial Correctional Facility, Canon City, Colorado)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Smith v. Marcantonio, 910 F.2d 500 (8th Cir. 1990). An inmate brought a Section 1983 claim against prison officials for injuries sustained when unknown inmates dumped scalding liquid on him. The U.S. District Court denied the defendants' motion for summary judgment based on qualified immunity, and the defendants appealed. The appeals court, reversing and remanding, found that the prison officials, who had no knowledge of the threat to the inmate, were entitled to qualified immunity. (Missouri State Penitentiary)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Steffenhagen v. Armontrout, 749 F.Supp. 997 (W.D. Mo. 1990). The parents of an inmate who was killed in prison brought a Section 1983 action against officials of the penitentiary seeking damages for violation of both their son's constitutional rights and their own constitutional rights to a parent-child relationship. The U.S. District Court denied the officials' motion for summary judgment and appeal was taken. On remand by the court of appeals, the district court found that the officials were not entitled to qualified immunity as the parents alleged that officials acted with deliberate indifference to the son's constitutional right to be reasonably protected from an attack from fellow inmates and a reasonable jury could conclude that reasonable persons in the officials' position could have known that their conduct violated a constitutional right to be reasonably protected from an attack by fellow inmates. (Missouri State Penitentiary, Jefferson City, Missouri)

U.S. Appeals Court
THREATS
SUPERVISION

Street v. Fair, 918 F.2d 269 (1st Cir. 1990). A state prisoner brought a pro se civil rights action alleging violations of his rights under the Eighth and Fourteenth Amendments. The U.S. District Court dismissed the complaint sua sponte, and the prisoner appealed. The court of appeals found that the state prisoner had not stated a claim for an Eighth Amendment violation through allegations that a campaign of violent intimidation was conducted by some prisoners against other prisoners in connection with prison dining hall seating, that the prisoner was threatened with physical harm on one occasion, that the prisoner was "afraid" and "aggravated," that the prisoner had to switch tables during meals, had to eat hurriedly or standing up, and on occasion had to skip a meal entirely. However, the court acted at least prematurely in dismissing the prisoner's claim for failure to state a claim sua sponte, with prejudice, and without affording the plaintiff prisoner notice and opportunity to be heard on the claim of an Eighth Amendment violation by the correctional officials' failure to remedy the complained of campaign of violent intimidation conducted by some prisoners against other prisoners in connection with the dining hall seating. In addition, the Eighth Amendment claim of cruel and unusual punishment was not frivolous. Although the nature and extent of the injury alleged was not sufficient to make out an actionable constitutional violation, the deficiency could conceivably be cured through an amended complaint. The prisoner was permitted to unilaterally withdraw the procedural due process claim asserted in the federal complaint and pursue the claim in state court, where the federal action which had been dismissed was being remanded for further action, and the defendants had yet to file a responsive pleading. (Massachusetts Correctional Institution, Cedar Junction)

U.S. District Court
SUPERVISION
PROTECTION FROM
HARM

Swader v. Com. of Va., 743 F.Supp. 434 (E.D. Va. 1990). A mother brought a civil rights action against the state and state officials following the death of her child. On motion to dismiss, the U.S. District Court found that the existence of a special relationship giving rise to a duty on the part of the state to provide protection was adequately alleged by the complaint, which asserted that the child lived with her mother on the state prison grounds where the mother was employed as a nurse, that they lived outside of the fenced-in portion of the prison where the inmates were lodged, that an inmate was improperly permitted to leave the fenced-in portion of the prison unaccompanied by a guard, and that the inmate raped and murdered the child. (Southampton Correctional Center, Virginia)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
WRONGFUL DEATH

Walker v. Norris, 917 F.2d 1449 (6th Cir. 1990). The administratrix of an inmate's estate brought action against prison guards and the guards' supervisors after the guards allegedly failed to prevent the inmate's stabbing death. The U.S. District Court entered judgment in favor of the plaintiff, and the defendants appealed. The court of appeals found that the prison guards violated the inmate's Eighth Amendment rights and could be held liable in the civil rights action when they failed to prevent the inmate's stabbing by another inmate, where the guards had an opportunity to prevent the stabbing, but failed to do so, and instead looked on while the inmate was attacked. The failure of the prison

guards' supervisors to instruct the guards with regard to operation of the unit doors and use of mace did not render the prison's training program "deliberately indifferent" to the rights of the inmates, precluding the supervisors from being held liable under a failure to train theory when the inmate was stabbed by another inmate after the guards failed to allow the inmate to escape through a unit door or restrain the other inmate. In addition, evidence was insufficient to hold the supervisors liable on the theory that the supervisors formulated flawed policies regarding the installation of a door to the inmate's unit and consumption of alcohol by inmates. Although the unit door prevented the inmate from escaping into the prison yard and the inmate who attacked him was intoxicated, there was no evidence that policy concerning the door caused the attack or that the supervisors were responsible for an informal policy permitting prisoners to produce and consume alcoholic beverages. The court also found that remand was required to determine whether a willful or malicious conduct exception to the Tennessee immunity statute provided a basis for imposing liability under Tennessee law upon the prison guards and their supervisors, where the jury's decision to award punitive damages suggested that the defendants' conduct may have fallen within the statutory exception. The award of \$175,000 to the estate of the inmate who died was not excessive, as in addition to losing his life, the inmate endured pain and suffering before he died. (Tennessee State Penitentiary)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER SUICIDE

Zwalesky v. Manistee County, 749 F.Supp. 815 (W.D. Mich. 1990). A widow of an intoxicated prisoner who committed suicide while a detainee, brought a Section 1983 action against jailers, the county, and the sheriffs department. The U.S. District Court found that the jailers were entitled to qualified immunity with respect to the "medical needs" claims brought by the widow. A general constitutional right to medical care did not establish a clear constitutional right to be appropriately screened by prison officials for suicidal tendencies and psychological problems. In addition, the jailers did not deprive the prisoner of a clearly established right by failing to prevent his suicide while detained in an allegedly inadequate detoxification room, and, thus, the jailers' supervisors could not held liable for improper training. (Manistee County Jail, Michigan)

1991

U.S. District Court
ARREST AND
DETENTION

Allen v. Board of Com'rs of County of Wyandotte, 773 F.Supp. 1442 (D.Kan. 1991). An arrestee, charged with a misdemeanor traffic offense, sued the county sheriff's department, the county sheriff, a sergeant, and deputies alleging that the defendants battered and falsely imprisoned her and subjected her to a strip search in violation of the federal constitution. The defendants moved for summary judgment. The U.S. District Court found that the strip search of the arrestee was unreasonable under the Fourth and Fourteenth Amendments absent any showing of necessity to confine the arrestee with other prisoners, but the five hour detention was not unreasonable under the Fourth Amendment. The deputy who conducted the strip search was not entitled to qualified immunity because the strip search of traffic offenders without some level of suspicion that they were harboring drugs, contraband or a weapon was pre se unreasonable at the time of the plaintiff's arrest. The state law claims for battery, negligence per se, false and negligent imprisonment, and negligent training and supervision and adoption of policies fell within exceptions to the Kansas Tort Claims Act. (Wyandotte County Sheriff's Department, Kansas)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Andrews v. Siegel, 929 F.2d 1326 (8th Cir. 1991). An inmate brought a Section 1983 action against prison officials, alleging that the failure to protect him from an attack by a fellow inmate violated his Eighth Amendment rights. The U.S. District Court dismissed the suit, and appeal was taken. The court of appeals, affirming the decision, found that prison officials did not violate the assaulted inmate's Eighth Amendment rights absent a showing that they recklessly disregarded, or were deliberately indifferent to the inmate's right to be free from violent attacks by another inmate. A single altercation between the inmates on the day before the attack was insufficient to put officials on notice that the attacker posed a danger to the inmate, and the officials were entitled to rely on the judgment of a prison psychiatrist that the attacker did not pose a serious threat to other inmates because of his mental condition. (Minnesota Correctional Facility, Stillwater, Minnesota)

U.S. District Court
PRISONER SUICIDE

Christian By and Through Jett v. Stanczak, 769 F.Supp. 317 (E.D. Mo. 1991). Survivors of a prisoner who committed suicide in a holdover cell brought a Section 1983 action against the arresting officer and a police dispatcher. The defendants moved for summary judgment. The U.S. District Court found that the officer's failure to designate the arrestee as a suicide risk did not subject the officer to liability in the Section 1983 action, even though the arrestee committed the suicide while he was incarcerated in a holdover cell. The warnings concerning the arrestee's reference to suicide, his state of intoxication, and his abusive behavior were insufficient to apprise the officer of the arrestee's suicidal tendencies. It was also found that the police dispatcher was not liable under Section 1983 for the suicide of the prisoner; while the dispatcher's failure to turn on the camera in the holdover cell at the beginning of her shift may have constituted negligence on her part, it did not rise to the level of deliberate indifference. (City of Florissant Police Department, Missouri)

U.S. Appeals Court
PRISONER SUICIDE

Colburn v. Upper Darby Tp., 946 F.2d 1017 (3rd Cir. 1991). The administratrix of the estate of a pretrial detainee who committed suicide in jail brought a civil rights action against the township and police officials. The U.S. District Court dismissed the complaint and the court of appeals affirmed in part, reversed and remanded in part. On remand, the district court granted summary judgment in favor of the defendants and the plaintiff appealed. The court of appeals found that the municipality was not liable for the suicide of the pretrial detainee. Two components of the concept of serious medical needs of prisoners, as to which deliberate indifference by prison officials violates the Eighth Amendment's proscription of cruel and unusual punishment, are that the detainee's condition must be such that failure to treat can be expected to lead to substantial and unnecessary suffering, injury or death, and that the condition be one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention. (Upper Darby Township Police Department, Pennsylvania)

U.S. Appeals Court
PRISONER SUICIDE
SUPERVISION

Dobson v. Magnusson, 923 F.2d 229 (1st Cir. 1991). The estate of a prisoner brought a suit against an officer of a state prison for damages resulting from the prisoner's suicide. The U.S. District Court entered summary judgment in favor of the defendant, and the estate appealed. The appeals court found that the prison officer's failure to put a suicide watch on the prisoner when the prisoner returned from a disciplinary board hearing where he was ordered to serve time in segregation was not deliberate indifference where the officer was given no history of suicidal tendencies on the part of the prisoner. Moreover, any failure on the officer's part to order the watch became res inter alios in light of fact that the prisoner was already on a watch because of the possibility of self-injury, not because of any perceived threat of suicide. The passage of 45 minutes between the correction officer's successive checks on the prisoner, who had been placed on a 15-minute watch because of the possibility of self-injury, did not amount to deliberate indifference. A psychologist, whose notes the officer had read, expressly rejected the threat of suicide. (Maine State Prison)

U.S. Appeals Court
PRISONER SUICIDE

Elliott v. Cheshire County, N.H., 940 F.2d 7 (1st Cir. 1991). The father of a detainee who committed suicide while in a county jail brought a civil rights action against the county, individual correctional officers, and the arresting officer. The U.S. District Court entered summary judgment in favor of all defendants and the father appealed. The court of appeals found that fact issues existed on the question of whether jail personnel knew or reasonably should have known of the detainee's suicidal tendencies. The detainee made suicide threats to fellow inmates, and whether inmates reported such threats to jail personnel in such a manner as to be taken seriously, and whether jail personnel responded reasonably or with deliberate indifference, precluded summary judgment for them. The arresting officer was not deliberately indifferent to the detainee's medical needs; although the officer was informed of the detainee's mental illness, he was not informed that the detainee had previously threatened suicide, and there was no reason to suspect from the detainee's demeanor or actions that such danger existed. The county could not be held liable absent an indication of inadequately training its officers or maintaining an unsafe jail. (Cheshire County House of Corrections, New Hampshire)

U.S. District Court
FAILURE TO
PROTECT
OFFICER ON
PRISONER
ASSAULT

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

U.S. District Court
PROTECTION FROM
HARM

Harding v. Jones, 768 F.Supp. 275 (E.D. Mo. 1991). A prisoner brought a Section 1983 action against the superintendent of a prison, two guards, and a former caseworker. The district court found that prison officials did not violate the Eighth Amendment rights of the prisoner by allowing him and an inmate with whom he had a dispute to remain in the general prison population; although the prisoner was informed of the availability of protective custody, the prisoner explicitly rejected it. This made his decision to remain in the general prison population voluntary. (Moberly Correctional Center, Missouri)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Hendricks v. Coughlin, 942 F.2d 109 (2nd Cir. 1991). An inmate brought an action against prison officials alleging that they violated his Eighth Amendment rights by inadequately protecting him against threats from and assault by another prisoner. The U.S. District Court entered judgment on jury verdict in favor of the officials and the inmate appealed. The court of appeals found that the question of whether the assault on the inmate was committed or orchestrated by a fellow prisoner who threatened the inmate, so as to causally link the inmate's injury to prison officials' alleged deliberate indifference, was for a jury in the inmate's Section 1983 action. It was also found that the jury instructions in the inmate's action against prison officials created an erroneous impression that, unlike the inmate's excessive force claim, the finding of recklessness as to his claim of failure to adequately protect him from a fellow prisoner would not support a verdict in his favor. (Attica Correctional Facility, New York)

State Court
FAILURE TO
PROTECT

Hereford v. Jefferson County, 586 So.2d 209 (Ala. 1991). Two men were robbed by a prisoner who, although serving a sentence of life without parole, had been mistakenly released from an Alabama jail. The men sued the county, the county sheriff, and several deputy sheriffs, alleging negligence and wantonness in releasing the prisoner. The Alabama Supreme Court upheld summary judgment for the defendants. The court found that an Alabama sheriff is an executive officer of the state, entitled to sovereign immunity under state law. It was also found that the county could not be held vicariously liable for the acts of the sheriff for which he had sovereign immunity. In addition, the acts of deputy sheriffs, the court noted, are considered the "acts of the sheriff." As a result, no liability could arise from their allegedly negligent acts. (Jefferson County, Alabama)

U.S. District Court
PROTECTION FROM
HARM
SUPERVISION

Hill v. Franklin County, Ky., 757 F.Supp. 29 (E.D. Ky. 1991), affirmed, 948 F.2d 1289. An arrestee's widow brought a civil rights action against a county and county officials, alleging that the arrestee was improperly released from custody while he was still intoxicated. On the defendants' motion for summary judgment, the district court found that the decision to release the intoxicated arrestee was not a result of county policy, precluding the county from being held liable. The court noted that, even if the county had a custom of holding intoxicated arrestees until another person arrived to take responsibility for the arrestee or until the arrestee was no longer a danger to himself or herself, the county's deviation from the custom, on a single occasion, when it released the arrestee before his wife arrived to pick him up, and he was struck and killed by an automobile, could not form a basis for a civil rights action against the county, where the decision to release the arrestee was made by non-policy making county employees. (Franklin County Jail, Kentucky)

U.S. District Court
PRISONER SUICIDE

Hinkfuss v. Shawano County, 772 F.Supp. 1104 (E.D. Wis. 1991). The personal representatives and survivors of a pretrial detainee who committed suicide brought a Section 1983 action against the county and jail officials who moved for summary judgment. The U.S. District Court found that the county could not be held liable for the suicide based on the claim of deliberate indifference to the right of detainees to medical attention. There was no contention that the county's policy of giving jailers discretion in determining medical conditions and needs of detainees was one of deliberate indifference. The jailers' failure to provide the detainee with emergency medical attention did not show that the jailers were inadequately trained pursuant to policies or customs of the county, and the detainee's request for medical attention was not specific or urgent. The court also found that the jail officials were entitled to qualified immunity from liability; there was nothing which indicated that the conduct of the jailers was deliberately indifferent to the medical needs of the detainee nor was there anything on the record to indicate a strong likelihood that the detainee would commit suicide. (Shawano County Jail, Wisconsin)

U.S. Appeals Court
FAILURE TO
PROTECT
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM
THREATS

Hobbs v. Evans, 924 F.2d 774 (8th Cir. 1991). An inmate brought a civil rights action against prison officials, asserting an Eighth Amendment right to be free from violent attacks by fellow inmates. The U.S. District Court entered judgment against two officials, and they appealed. The court of appeals found that the prison officials did not act in reckless disregard of the inmate's right to be free from inmate attacks absent a showing that the inmate was faced with a pervasive risk of harm at the institution and that the officials failed to respond reasonably to that risk. The finding that a prison guard acted in reckless disregard of the inmate's right to be free from assault by other inmates was sufficiently supported by evidence that the inmate suffered three assaults after the guard labeled him as an informant. (Maximum Security Correctional Facility, Tucker, Arkansas)

U.S. District Court
FAILURE TO
PROTECT
SUICIDE
SUPERVISION

Kocienski v. City of Bayonne, 757 F.Supp. 457 (D. N.J. 1991). An administratrix of a pretrial detainee's estate brought a civil rights action against a city and city police officers based on the detainee's suicide death. On the officer's motion for summary judgment, the U.S. District Court found that even if the police officer was aware of the detainee's suicidal tendencies, the officer's failure to communicate those tendencies to other officers did not constitute deliberate indifference to the detainee's needs in violation of due process; any failure by the officer to communicate suicidal tendencies to other officers constituted negligence only. The police officers' failure to assure that the detainee's pantyhose were removed after becoming aware that she was wearing pantyhose did not constitute deliberate indifference to the detainee's psychological needs because no evidence indicated that the officers had knowledge of the detainee's suicidal tendencies. After it was determined that police officers were not deliberately indifferent to the pretrial detainee's needs when they failed to prevent her suicide, the city could not be held separately liable for failing to train its police officers. (Bayonne Municipal Jail, New Jersey)

U.S. Appeals Court
PRISONER SUICIDE

Leshore v. County of Worcester, 945 F.2d 471 (1st Cir. 1991). A civil rights action was brought against a county and county officials in connection with a suicide of a pretrial detainee. The U.S. District Court entered judgment on the verdict in favor of the defendants, and the plaintiff appealed. The court of appeals found that the U.S. District Court did not abuse its discretion in removing default against the county two weeks before trial, on the grounds that failure to respond was due to an illness of the defendant county's attorney, despite the plaintiff's contention that the short interval between the removal of default and trial precluded discovery against the county. The plaintiff was not prejudiced where she never moved to continue the case to conduct a discovery and had already deposed several county officials in preparing her case against individual defendants, who were themselves county officers. In addition, it was found that there was no plain error in instructing the jury to consider whether the detainee was in need of psychiatric care "particularly" at the time of the suicide, or in a comment concerning the lack of evidence that a suicidal person remains forever suicidal, in light of evidence that the detainee's condition did appear to have changed following an earlier suicide watch, and since the jury was not precluded from finding that earlier manifestations were so severe that the defendants should have known that the detainee continued to need treatment on the date of the suicide. (Worcester House of Correction, Worcester, Massachusetts)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

McGill v. Duckworth, 944 F.2d 344 (7th Cir. 1991), cert. denied, 112 S.Ct. 1265. An inmate brought an action against prison officials and a prison guard after he was attacked by another inmate. Following judgment for the inmate, defendants moved for judgment notwithstanding the verdict, for a new trial, or for amendment of the judgment. The U.S. District Court denied the motion in part, and appeals were taken. The court of appeals, affirming in part, and reversing in part, found that the prison officials' decision to place the inmate in the segregation unit was not sufficient evidence of "recklessness" to give rise to an Eighth Amendment claim when the inmate was sexually assaulted, on the grounds that officials should have known of the higher risk of assaults faced by small, young prisoners, and those in protective custody. There was no evidence that officials put the inmate in the segregation unit because of, rather than in spite of, risk to him, as risk in the general population would have been greater, and evicting another inmate from the unit dedicated to protective custody would have shifted the incidents of risk without reducing the risk of vulnerable inmates as a group. In addition, it was found that the prison inmate incurred the risk, and thus prison guards and officials could not be found liable under Indiana law on negligence theory for injuries inflicted on the inmate when he was raped in the shower by another inmate; the plaintiff inmate could have remained in his cell or alerted guards to the risk of attacks but failed to do so and passed a guard in silence on his way to the shower. (Indiana)

State Court
FAILURE TO PROTECT
WRONGFUL DEATH

McQueen v. Williams, 587 So.2d 918 (Miss. 1991). A son of a man who was one of two men murdered by two convicts during a burglary that took place after the two convicts escaped from a county jail where they were being held because of overcrowded conditions, sued the county sheriff for the wrongful death of his father. He claimed that the failure to

prevent the escape or "promptly and adequately" inform the public of the dangerousness of the offenders constituted negligence. The complaint, seeking \$1.5 million in damages, claimed that the sheriff and his subordinates failed in a "ministerial duty" to keep the prisoners confined "by leaving the jail door unlocked" and thereby permitting an escape. The Mississippi Supreme Court upheld summary judgment for the defendant sheriff, noting that, under state law, the sheriff's duty to keep prisoners confined, if any, is discretionary in nature, requiring the sheriff's personal "deliberation, decision and individual judgment." The sheriff was entitled to qualified immunity from liability, in the absence of any evidence that the sheriff exceeded his authority or committed intentional wrongdoing. (Mississippi)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Marsh v. Arn, 937 F.2d 1056 (6th Cir. 1991). An inmate at a women's prison who was attacked and severely beaten by a fellow inmate sued various prison officials. The U.S. District Court granted summary judgment for four of the defendants but denied judgment for a fifth defendant. Cross appeals were taken by the plaintiff and the fifth defendant. The court of appeals found that evidence was not sufficient to establish deliberate indifference on the part of any of the defendants, and thus all were entitled to qualified immunity. Although a cause of action for failure to protect an inmate from an attack by another inmate under the deliberate indifference standard of liability was established by the time of the assault on the inmate in 1985, the right of the inmate to be segregated due to threats of a roommate had not yet been sufficiently defined in the Sixth Circuit to be considered "clearly established" so as to defeat the prison official's qualified immunity defense. (Ohio Reformatory for Women)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM

Moore v. Winebrenner, 927 F.2d 1312 (4th Cir. 1991), cert. denied, 116 LE2 69. An inmate at a state correctional facility appealed from an order of the U.S. District Court granting summary judgment to a former warden in a pro se federal civil rights action arising out of the inmate's stabbing while he was housed in the jail annex. The court of appeals found that the appropriate inquiry was whether the warden acted wantonly, obdurately, or with deliberate indifference to a pervasive risk of harm at the prison, not whether he exercised reasonable care to protect inmates from that harm. The warden was not liable under a federal civil rights statute to the inmate who was stabbed while housed in a jail annex that was not originally designed to house inmates; when he assumed control, the warden had not ignored or exacerbated problems existing in the annexes but had embarked on a persistent campaign to rectify them, eventually succeeding in effectuating major changes, even though his "hands were tied to some extent due to a lack of funds and a lack of authority to take immediate and drastic actions." The warden, additionally, eventually succeeded in bringing about major changes, and the fact that some of the changes did not take place until after this particular stabbing did not render the warden's conduct "deliberate indifference." (Maryland Correctional Institution)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Payne v. Monroe County, 779 F.Supp. 1330 (S.D. Fla. 1991). An inmate who was attacked by a fellow prisoner brought a Section 1983 action against the county and a private guard service company that supervised the jail. A U.S. Magistrate judge recommended dismissal, and the inmate filed an objection to the report and recommendation. The district court adopted the report and recommendation and found that the prisoner's alleged attack could not give rise to an Eighth Amendment violation by the county as the inmate never claimed that the prisoner had previously attacked him or that he had informed the jail officials of a fear of attack, and nothing indicated a conscious or callous disregard for the inmate's safety. In addition, pendent jurisdiction would not be exercised over the jail inmate's negligence claim against the private guard service company that supervised the jail as the Section 1983 suit against the county had been dismissed, and the statute of limitations would not bar refiling of the negligence claim in state court. (Monroe County Jail, Florida)

U.S. Appeals Court
THREATS
PRISONER ON
PRISONER
ASSAULT

Purvis v. Ponte, 929 F.2d 822 (1st Cir. 1991). A pro se inmate brought an action against prison officials alleging a violation of the Eighth Amendment based on alleged deliberate indifference to the need for protection from inmate threats and assaults. The U.S. District Court dismissed the complaint as frivolous, and the inmate appealed. The court of appeals found that the inmate failed to state an Eighth Amendment claim. The prison inmate's allegations that cellmates had exhibited unspecified general "hostility" toward homosexuals, had assaulted a corrections officer, had refused to live with blacks, or exhibited bizarre behavior were not, standing alone, sufficient to establish that the inmate was subject to an unreasonable risk of harm in violation of the Eighth Amendment. (Old Colony Corrections Center, Massachusetts)

U.S. Appeals Court
PROTECTION FROM
HARM
PRISONER ON
PRISONER
ASSAULT

Redman v. County of San Diego, 942 F.2d 1435 (9th Cir. 1991). A pretrial detainee sued a county and county jail personnel under Section 1983 after he was placed in a holding cell with a homosexual resulting in his rape. The U.S. District Court directed a verdict in favor of all defendants, and the detainee appealed. The court of appeals affirmed. After granting rehearing en banc, the court of appeals found that the pretrial detainee established a violation of his right to personal security under the due process clause of the Fourteenth Amendment by demonstrating that prison officials acted with deliberate indifference or that their conduct was so reckless as to be tantamount to desire to inflict harm. In addition, a jury question was presented as to whether jail officials were acting pursuant to county policies or customs when placing the pretrial detainee in a cell with the alleged "aggressive homosexual," who subsequently raped him, and whether that policy or custom exacerbated the danger posed by the aggressive homosexual to the general prison population to such an extent that it amounted to deliberate indifference to the pretrial detainee's personal security in violation of Section 1983. A second jury question was presented as to whether the county sheriff was deliberately indifferent to the pretrial detainee's personal security rights by allowing overcrowding of the county jail and whether the sheriff acquiesced in the deficient policy which was the moving force behind the pretrial detainee's rape by his cellmate and which repudiated the detainee's constitutional right to personal security. A final jury question was presented as to whether the police captain in charge of the county jail facility developed and implemented policies that were deliberately indifferent to the pretrial detainee's personal security and were the moving force in violation of the detainee's constitutional rights and as to whether the captain's assumption that heterosexual inmates were more able to protect themselves from "aggressive" homosexuals than "passive" homosexuals exhibited deliberate indifference to the potential security risk posed by placing an "aggressive" homosexual in a cell with a heterosexual inmate. (San Diego County's South Bay Detention Facility, California)

U.S. Appeals Court
PRISONER SUICIDE

Simmons v. City of Philadelphia, 947 F.2d 1042 (3rd Cir. 1991). A mother and administratrix of the estate of a detainee who hung himself in a Philadelphia station house lockup after having been arrested for intoxication brought an action seeking damages under Section 1983 and under state law. On the defendants' motions for post trial relief, following a jury verdict in favor of the plaintiff, the United States District court denied relief and the city and turnkey appealed. The court of appeals found that evidence made a question for the jury whether the city violated the detainee's rights by means of custom or policy tainted by deliberate indifference to serious medical needs of intoxicated detainees and as to whether the city violated the detainee's rights through deliberately indifferent failure to train officers responsible for intoxicated detainees in suicide detection and prevention, and was sufficient to support a conclusion that indifference to the needs of detainees and failure to train was the cause of violation of the detainee's Fourteenth Amendment rights. In addition, it was found that the Pennsylvania political subdivision Tort Claims Act did not nullify a city ordinance waiving immunity from liability arising from the negligence of city police officers. (6th Police District, Philadelphia, Pennsylvania)

U.S. Appeals Court
PRISONER SUICIDE

Torraco v. Maloney, 923 F.2d 231 (1st Cir. 1991). A mother of an inmate who committed suicide sued prison officials under Section 1983, alleging that the suicide was caused by the officials' deliberate indifference to the inmate's serious mental health and safety needs in violation of the Eighth Amendment. The U.S. District Court entered summary judgment for the officials, and the mother appealed. The court of appeals found that there was insufficient evidence of deliberate indifference. Even though they failed to provide the inmate with psychiatric -- as opposed to psychological -- care, and even though officials did not place the inmate in a "suicide cell," the record showed that prison officials accommodated the inmate both times he expressed a need for mental health attention. (MCI-Cedar Junction, Massachusetts)

U.S. District Court
PRISONER SUICIDE

Trask v. County of Strafford, 772 F.Supp. 42 (D. N.H. 1991). The mother of a pretrial detainee who committed suicide brought a Section 1983 action against correctional officers and the officers moved for summary judgment. The U.S. District Court found that the allegation that a classification specialist, who interviewed the pretrial detainee and perceived no signs that he would injure himself, and contravened county policy when he failed to contact a doctor or nurse after learning of the detainee's dependency on alcohol, would only have supported a negligence claim and did not amount to the deliberate indifference that would have required remedy under Section 1983. (Strafford County, NH)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Wilkins v. Davis, 780 F.Supp. 646 (E.D.Mo. 1991), affirmed, 963 F.2d 377. A federal pretrial detainee brought a civil rights action against jailhouse officials alleging that the officials failed to take sufficient precautions to protect him from an assault. The district court found that the detainee failed to show that jailhouse officials recklessly disregarded, or were deliberately indifferent to, his right to be free from violent attacks by other inmates in violation of due process. The altercations between the detainee and his

cellmate were isolated incidents that did not present a "pervasive risk of harm," the detainee did not allege that the cellmate threatened him with future harm, and there was no evidence that the jail officials would have known of a strong likelihood that the cellmate would assault the detainee again. (Pemiscot County Jail, Caruthersville, Missouri)

U.S. District Court
OFFICER ON
PRISONER
ASSAULT
PRISONER ON
PRISONER
ASSAULT

Williams v. Blackburn, 761 F.Supp. 24 (M.D. La. 1991), affirmed, 14 F.3d 52. An inmate sought damages under a federal civil rights statute and state law based upon his claims that correctional officers knowingly allowed another inmate to throw scalding water on him, that he was subject to an unprovoked attack by an officer, and that he was denied medical care following each incident. A U.S. Magistrate found that the inmate had not suffered any significant injury that would support his claims under the Eighth Amendment, but concluded that the inmate could recover on his Fourteenth Amendment failure to protect claim. The district court found that the inmate could not recover on the Fourteenth Amendment claim either, as a significant injury was an essential element of that claim as well. (Louisiana)

1992

U.S. Appeals Court
MEDICAL CARE
PRISONER SUICIDE

Barber v. City of Salem, Ohio, 953 F.2d 232 (6th Cir. 1992). An administrator of a pretrial detainee's estate brought a Section 1983 action against police officers and a city based on the detainee's suicide. The United States District Court granted summary judgment in favor of the police officers and the city, and the administrator appealed. The appeals court, affirming the decision, found that there was no clearly established right to suicide prevention screening or facilities in 1982 when the pretrial detainee hanged himself; therefore, the law enforcement officers were entitled to qualified immunity from liability in the action. The city could not be held liable for any failure to better train personnel to detect and deter jail suicides. Although the pretrial detainee expressed concern over his job, his engagement, and his ability to obtain custody of his young son due to his arrest, such a reaction to arrest for driving under the influence of alcohol could not be considered abnormal and would not have alerted jail authorities to a strong likelihood that the detainee would commit suicide in such a manner that failure of the city to take precautions amounted to deliberate indifference to the detainee's serious medical needs. (Salem City Jail, Salem, Ohio)

U.S. District Court
FAILURE TO
PROTECT
SUICIDE
MEDICAL CARE
SUPERVISION

Bragado v. City of Zion/Police Dept., 788 F.Supp. 366 (N.D. Ill. 1992). An estranged husband of a detainee who committed suicide while in custody brought action on behalf of himself and the detainee's estate against officials alleging violation of civil rights. The defendants brought a motion for summary judgment. The district court found that material issues of fact as to whether police had actual or constructive knowledge of the detainee's suicidal condition and whether the response to that condition constituted "deliberate indifference" precluded granting summary judgment in favor of the defendants. There was substantial evidence that the detainee suffered from psychological problems of which the police were aware, or should have been aware. Police reports of two incidents involving the detainee include statements by her former boyfriend and others that she threatened to commit suicide and may have attempted to do so. When she was arrested, she had cuts on her wrists and had just written a note stating her "life is over now." The police were clearly aware of both the cuts and the note, and the detainee threatened to commit suicide repeatedly while she was in her cell. The police consultation with the State's Attorney's office and the decision to hold the detainee overnight, apparently for her own safety, also suggest that the police considered her suicidal. The detainee was not constantly supervised, and it was clearly established at the time of the arrest that the "deliberate indifference" standard applied to the handling of suicidal pretrial detainees, and that failure to take special precautions toward such detainees could violate that standard. (Zion, Illinois, Police Station)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM

Doe v. Sullivan County, Tenn., 956 F.2d 545 (6th Cir. 1992). An inmate brought a Section 1983 action against county and various jail officials alleging that his Eighth Amendment rights were violated when a cellmate sexually assaulted him by inserting a toothbrush into his anus while the inmates were pushed together to separate them from another inmate being removed from the cell. The U.S. District Court decisions were appealed by both parties. The court of appeals affirming in part, and reversing and remanding in part, found that systemic deficiencies at the county jail were not the cause of the sexual assault on the inmate. Even though the jail was overcrowded, had insufficient lighting, and had inadequate surveillance, the inmate produced no evidence that these conditions caused the assault. It was also found that even though the inmate testified that he told a deputy that the cellmate was harassing and sexually assaulting him, the inmate contradicted himself on whether he told the deputy of the harassment before or after the assault. (Sullivan County Jail, Tennessee)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM

Elliott v. Byers, 975 F.2d 1375 (8th Cir. 1992). Maximum security prisoners, forced to work on a hoe squad in shoulder to shoulder "tightened down" formation, brought a suit against several prison officials alleging violation of their Eighth Amendment right to be free from cruel and unusual punishment because they faced the risk of attack from other prisoners while working in such situations. The U.S. District Court entered judgment upon a jury verdict against the prisoners, and they appealed. The appeals court, affirming the decision, found that under the Eighth Amendment cruel and unusual punishment analysis, in order to show reckless disregard of prison officials, the inmates must show that they face a pervasive risk of harm or that the prison officials had reacted unreasonably to any alleged risk. The inmates ordinarily may not show pervasive risk of harm from single or isolated incidents, but it may be shown by frequent assaults that place a prisoner or group of prisoners in reasonable fear for their safety. (Arkansas)

U.S. Appeals Court
FAILURE TO
PROTECT
PRISONER ON
PRISONER
ATTACK

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. Appeals Court
OFFICER ON
PRISONER
ASSAULT

Flowers v. Phelps, 956 F.2d 488 (5th Cir. 1992). An inmate brought a Section 1983 action against correctional officers who allegedly beat him, claiming an Eighth Amendment violation. The U.S. District Court entered judgment for the inmate, and appeal was taken. The court of appeals affirmed the decision, as the finding that the correctional officers violated the inmate's Eighth Amendment rights was sufficiently supported by evidence that they attacked the inmate without provocation or rational justification and that, while they did not cause any objectively significant injury, their intention was to cause the inmate sufficient pain to dissuade him from filing requests for administrative relief against them in the future. It was also found that the Eleventh Amendment did not preclude the inmate's claim against the correctional officers as state law did not mandate indemnification of officers in cases of wrongful, intentional acts. (LA State Penitentiary)

U.S. Appeals Court
FAILURE TO
PROTECT
PRISONER ON
PRISONER
ASSAULT

Gibson v. Foltz, 963 F.2d 851 (6th Cir. 1992). The widow of an inmate who was killed when he was stabbed by a fellow inmate sued prison officials and a corrections officer under Section 1983. The U.S. District Court granted the defendants' motion for summary judgment. The appeals court found that the widow failed to show that the assault was a result of deliberate indifference by the defendants. The corrections officer's failure to be at the area of the prison in which the inmate was fatally assaulted with a weapon, and the officer's alleged failure to conduct required searches of cells and inmates, did not rise to a level of "deliberate indifference," and thus, did not violate the Eighth Amendment. There was no evidence that they knew that the victim was in danger or that any specific dangerous condition existed in the cell block in which the assault occurred. (State Prison of Southern Michigan)

U.S. Appeals Court
PRISONER SUICIDE

Hall v. Ryan, 957 F.2d 402 (7th Cir. 1992). The estate of a detainee who committed suicide while being held in jail brought a Section 1983 action against police officers. The U.S. District Court denied the officers' motion for summary judgment, and appeal was taken. The court of appeals found that a jury question existed as to whether the police officers had treated the detainee, who had committed suicide in his cell, with wilful neglect, so as to lose the benefit of qualified immunity, when they neglected to consult his file after observing him cursing, flinging his shoes, urinating in his cell, and repeatedly flushing the toilet. (City of Decatur Police Department, Illinois)

U.S. Appeals Court
FAILURE TO
PROTECT
PROTECTION FROM
HARM

Hardin v. Hayes, 957 F.2d 845 (11th Cir. 1992). The estate of an arrestee who died while in city police custody and temporarily housed in the county jail brought a Section 1983 action against local officials. The U.S. District Court denied the officials' motions for summary judgment, and appeal was taken. The court of appeals found that the officials lacked sufficient involvement to be held liable for the arrestee who died accidentally after swallowing soap because, on the day before the incident, an officer had ordered the city, for whom the county was providing facilities for part of the time, to take the arrestee away. It was noted that she had injured herself banging her head on bars, and on the day in question, the official had observed the arrestee pacing in her partially flooded cell with excrement on the floor. (Etowah County Jail, Alabama)

U.S. Appeals Court
MEDICAL CARE
SUICIDE

Heflin v. Stewart County, Tenn., 958 F.2d 709 (6th Cir. 1992). The relatives of a pretrial detainee who hung himself in a jail cell sued the county, the sheriff, and a deputy alleging that the defendants' failure to cut the detainee down when he was discovered hanging in his cell was the proximate cause of the inmate's death and constituted deliberate

indifference to his medical needs in violation of the Eighth Amendment. The U.S. District Court ordered judgment on jury verdict in favor of the plaintiffs, and the defendants appealed. The court of appeals found that a jury question was presented in the Section 1983 action as to whether the pretrial detainee died as the proximate result of the failure of the sheriff and deputy to take any steps to save the detainee's life when he was found hanging in a cell. The sheriff and deputy did not cut the detainee down but waited for medical personnel to arrive and photographs to be taken, even though the body was warm and the detainee's feet were touching the floor. It was found that the sheriff and deputy exhibited deliberate indifference to the pretrial detainee's serious medical needs as a result of these actions. The testimony of an expert in the field of correctional institutions that in his opinion the conduct of the sheriff and deputy demonstrated deliberate indifference to the detainee's need for emergency care which would have saved his life was not an improper opinion on a key legal issue of the Section 1983 case, alleging a violation of the Eighth Amendment. The testimony merely emphasized the expert's view of the seriousness of the jailers' failures and was not a conclusion of law. A jury question was presented as to whether the county had a policy or custom requiring officers on the scene of a suicide attempt to leave an inmate found hanging while pictures are taken and until a medical examiner arrives so as to render the county liable. The court also found that the sheriff and deputy were not entitled to qualified immunity in the suit as the unlawfulness of not doing anything to attempt to save the detainee's life would have been apparent to reasonable officers in the defendants' positions in light of preexisting law. (Stewart County Jail, Tennessee)

U.S. District Court
OFFICER ON
PRISONER
ASSAULT
USE OF FORCE

Jones v. Huff, 789 F.Supp. 526 (N.D.N.Y. 1992). An inmate brought a suit seeking damages for excessive use of force by corrections officers. The district court found that one corrections officer's punch to the inmate, administered in an effort to restore discipline in face of the inmate's deliberate disobedience in ignoring a repeated order to stop walking and in subsequently striking another officer, did not violate the inmate's Eighth Amendment rights. Similarly, an officer's headlock on the inmate as he escorted him to a holding room did not violate the Eighth Amendment, as the inmate continued to struggle as the officer attempted to gain control. However, an officer who did not intercede to stop the unnecessary beating of the inmate by other officers was liable to that inmate for that failure, as kicks and punches were not administered in a good faith effort to restore discipline, and could not have possibly been thought necessary, since the inmate was already pinned face down by two officers. In addition, the inmate's Eighth Amendment rights were violated by another officer when the officer participated in ripping the inmate's clothes off him because the inmate would not come or was too slow to strip. Such force was not necessary, given the number of officers present in the holding room and the fact that by that point the inmate was subdued. The inmate's award of punitive damages of \$2,000 was appropriate and would be apportioned equally among two correction officers based on the fact that one officer, through his failure to intercede, and another officer, through striking the inmate, equally contributed to the inmate's injuries. (Mt. McGregor Correctional Facility, New York)

U.S. District Court
SUPERVISION
SUICIDE ATTEMPT

Lile v. Tippecanoe County Jail, 844 F.Supp. 1301 (N.D. Ind. 1992). The district court found that allegations that pretrial detainees were asked to watch another inmate who had allegedly been brought to the jail because of mental problems, that another inmate twice attempted to commit suicide, and that the detainees were required to clean up after an initial suicide attempt, failed to state a Section 1983 claim against any of the county jail officials under the prevailing standard of deliberate indifference. The court found that there was no evidence that the actions of the officials were intended to punish the detainees, or that their conduct toward the detainees amounted to criminal recklessness. (Tippecanoe County Jail, Indiana)

U.S. Appeals Court
STAFFING
PROTECTION FROM
HARM

L.W. v. Grubbs, 974 F.2d 119 (9th Cir. 1992). A registered nurse at a medium security custodial institution for young male offenders brought a Section 1983 action against her supervisors arising out of a situation in which she was raped and terrorized by an inmate. The U.S. District Court dismissed the action, and the nurse appealed. The appeals court, reversing and remanding, found that the nurse could maintain a Section 1983 claim against her supervisors on the basis that they created a dangerous situation. The supervisors assigned the nurse to work with the inmate despite knowing of his history of violence against women, that he was likely to assault a female if left alone with her, and that the nurse would be alone with the inmate. (Oregon)

U.S. Appeals Court
SUICIDE

Manarite v. City of Springfield, 957 F.2d 953 (1st Cir. 1992). The estate and minor daughter of a detainee who committed suicide while in protective custody sued the police chief and the city under Section 1983 for their alleged failure to prevent the suicide. The U.S. District Court granted summary judgment for the defendants, and the plaintiffs appealed. The court of appeals found that the police chief's failure to insist that officers who implemented the suicide prevention policies remove shoelaces from persons in protective custody was not "deliberate indifference" that would permit holding the chief

liable for suicide of a person in protective detention. Although four detainees tried to hang themselves with shoelaces in the preceding nine months, the chief's conduct might have been negligent, but not deliberately indifferent. In addition, the city's failure to provide training and education for police officers in suicide detection and prevention was not "deliberate indifference" in violation of Section 1983, as the city's training and policies regarding suicide prevention were in accord with requirements of state law at the time of the detainee's suicide, and there was no basis for finding that his suicide was closely related to the city's failure to train officers in suicide prevention. The prison official's failure to prevent the suicide of the detainee did not violate the detainee's minor daughter's right of familial associational privacy, and thus, afforded her no right of recovery under Section 1983; the daughter had no liberty interest protected by the due process clause in her familial relationship with her father. (Springfield Police Station, Springfield, Massachusetts)

U.S. Appeals Court
OFFICER ON
PRISONER
ASSAULT
SUICIDE ATTEMPT

Martin v. Harrison County Jail, 975 F.2d 192 (5th Cir. 1992). A pro se prisoner brought a civil rights action against a county jail based on conditions of confinement and an assault by a prison guard; the jail moved for summary judgment. The U.S. District Court granted the motion, and the prisoner appealed. The appeals court, affirming the decision, found that the guard's assault on the prisoner who was cutting his wrist in a suicide attempt did not involve unconstitutionally excessive force. According to the court, the prisoner did not allege how many times he was struck, whether the blows were significant, or how many people hit him. As the guards were obligated to prevent the prisoner from committing suicide, some force was called for. (Harrison County Jail, Mississippi)

U.S. District Court
SUICIDE

Merideth v. Grogan, 812 F.Supp. 1223 (N.D. Ga. 1992), affirmed, 985 F.2d 579. Following the suicide of a detainee while he was being held in a county jail, plaintiffs brought an action against the county sheriff, county's deputies, the county, and others, alleging civil rights violations. The defendants moved for summary judgment. The district court granted the motion in part and denied it in part. The court found that a police officers' seizure of the man was a "reasonable seizure" where he was under the influence of alcohol and brandishing a loaded pistol while proclaiming an intent to kill himself. However, the sheriff and deputies had a duty to protect the detainee's liberty interests, including attending to his psychiatric needs, once he was taken into custody. Material issues of fact precluded summary judgment on various issues, including whether policy or custom existed which amounted to deliberate indifference regarding required medical care to persons in custody of the county jail. (Paulding County Sheriff's Department, Georgia)

U.S. District Court
SUICIDE

Perkowski v. City of Detroit, 794 F.Supp. 223 (E.D. Mich. 1992). The estate of a jail detainee who committed suicide brought a civil rights action against, inter alia, the city. The city filed a motion to dismiss. The district court granted the motion, finding that the evidence failed to establish that the jail detainee showed a strong likelihood that he would take his own life. Thus, the city could not be held liable under the federal civil rights statute for the detainee's suicide, despite the fact that the detainee was intoxicated and uncooperative. (4th Precinct, Detroit, Michigan)

U.S. Appeals Court
PRISONER SUICIDE
ATTEMPT

Rich v. City of Mayfield Heights, 955 F.2d 1092 (6th Cir. 1992). Action was brought against police officers, paramedics, the city, and the police chief based on a pretrial detainee's attempt to hang himself. The U.S. District Court denied the summary judgment motion and the officers, city, and police chief appealed. The court of appeals found that the police officers were entitled to qualified immunity from liability. According to the court, the defendant police officers reacted immediately by calling for the paramedics, and the paramedics arrived within minutes. The police officers did not intentionally deny or delay access to medical care, and there was no recognized constitutional right that would have required the officers to cut down the detainee themselves rather than call for medical assistance. (Mayfield Heights City Jail, Ohio)

U.S. Appeals Court
PRISONER SUICIDE
ATTEMPT
PROTECTION FROM
HARM

Schmelz v. Monroe County, 954 F.2d 1540 (11th Cir. 1992). A guardian of an arrestee who was rendered incompetent in a suicide attempt at a county jail sued the sheriff and the sheriff's department employees under Section 1983. The U.S. District Court granted summary judgment for the sheriff, and denied it as to the employees. The guardian appealed and the employees cross-appealed. The court of appeals found that, based on a doctrine of judicial economy, because the court of appeals had jurisdiction over the district court's qualified immunity order denying summary judgment for the prison officials, it would exercise pendent appellate jurisdiction over the district court's decisions concerning Eleventh Amendment immunity, the official's claim that he had not created a custom or policy resulting in the arrestee's injury, and the deliberate indifference charge against all officials, as resolution of those ordinarily nonappealable claims could put an end to the federal aspects of the case. It was also found that the guardian failed to show that the sheriff's unwritten policy for dealing with suicidal inmates was unconstitutional. The policy made an effort to identify and protect potentially suicidal inmates from self-harm,

and the guardian did not show that the sheriff's department employees' failure to do more resulted from inadequate training amounting to deliberate indifference to the needs of the jail's inmates. In addition, the guardian failed to show "deliberate indifference" on the part of the sheriff's department employees, and thus, the employees were entitled to qualified immunity. There was no evidence that the arrestee had previously tried to commit suicide, one employee went beyond the standard procedure to place the arrestee on "suicide watch" after noticing that he was "very mellow" in contrast to his past behavior, and the failure to remove a blanket with which the arrestee attempted to hang himself, and another employee's two-minute absence from that part of the jail, could be characterized, at best, as mere negligence. (Monroe County Sheriff's Department, Florida)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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)

1993

U.S. District Court
INTIMIDATION

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 district court found that the intimidation of the state inmate by another inmate where the intimidation did not result in any actual injury but only in the inmate giving the other inmate his pork and beef from his meals and being forced to sleep on a mattress on the floor of his cell was not a violation of a clearly established constitutional right. Therefore, the state officials were entitled to qualified immunity from liability in the Section 1983 action with respect to the intimidation claims. The court noted that requiring an inmate to sleep on the floor, by itself, does not constitute a constitutional violation. In Hawaii, there is no constitutional difference between sleeping on a mattress placed on a concrete slab and sleeping on a mattress placed on a concrete floor. In addition, the plaintiff admitted that because of his religious convictions, he would not have eaten the beef or pork in his meal if given the chance. 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. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Best v. Essex County, N.J. Hall of Records, 986 F.2d 54 (3rd Cir. 1993). A pretrial detainee sued a county, county executive and others under a civil rights statute after he was assaulted by another detainee in a jail day room. Summary judgment for the defendants was granted by the U.S. District Court and the plaintiff appealed. The court of appeals, affirming the decision, found that although the jail was overcrowded and the county was under direct court order to update the facility to alleviate overcrowding, the county and county executive were not liable under the civil rights statute for assault on the detainee when another detainee poured hot water from a coffee urn over him during an altercation in the day room. Any possible connection between the conditions at the jail and the assault was too attenuated to allow recovery, as there was no demonstration of a connection between overcrowding and the assault or even allegations, absent the overcrowding, that the plaintiff would not have been with the assailant in the day room. (Essex County Jail Annex, New Jersey)

U.S. District Court
SUICIDE
SUPERVISION
WRONGFUL DEATH

Bragado v. City of Zion/Police Dept., 839 F.Supp. 551 (N.D.Ill. 1993). A suit was brought under the Section 1983 civil rights statute, the Illinois Survival Act, and the Illinois Wrongful Death Act seeking damages for the city's failure to personally inspect and prevent the suicide of a jail prisoner. After the jury returned a verdict in favor of the plaintiff, posttrial motions were made in which the plaintiff sought funeral expenses and the defendant sought judgment notwithstanding the verdict. The district court found that

evidence supported a finding that jail officials acted with deliberate indifference to the prisoner's rights. Inadequate personal inspections of the prisoner were done despite the knowledge of the prisoner's suicidal tendencies. Audio and video monitoring were also insufficient. In addition, the on-duty officer knew of the prisoner's threat of suicide, as well as her intoxication and injuries to her wrists. The court also found that the jury's verdict awarding damages for the city's wrongful failure to prevent the prisoner's suicide, in the amount of \$5,000 under the Illinois Survival Act and approximately \$232,000 under the Illinois Wrongful Death Act as well as nominal damages for Section 1983 civil rights violation, was supported by evidence and was reasonable. (City of Zion Police Station, Zion, Illinois)

U.S. Appeals Court
OFFICER ON
PRISONER
ASSAULT
LIABILITY

Buckner v. Hollins, 983 F.2d 119 (8th Cir. 1993). An inmate brought a Section 1983 action against a corrections officer for failure to stop another corrections officer from beating him. The district court denied the officer's motion for summary judgment, and the officer appealed. The court of appeals, affirming the decision, found that the officer was not immune from the suit as it was not objectively rational for the officer to stand by and watch another officer beat a handcuffed and naked inmate. The officer's failure to intervene to stop the beating of the inmate would provide an adequate basis for a jury to conclude that the officer had acted with deliberate indifference. (Jackson County Detention Center, Missouri)

U.S. District Court
SUICIDE ATTEMPT
TRANSFER

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
PRISONER ON
PRISONER
ASSAULT

Counce v. Goings, 816 F.Supp. 674 (D. Kan. 1993). An inmate brought a Section 1983 action against officers of a correctional facility, claiming they acted with deliberate disregard to his safety in not preventing his beating by other prisoners. The district court found that there was no factual basis for finding that prison officers acted with "deliberate indifference" to the safety of the inmate as required for the inmate to prevail on the Section 1983 claim. Even though each officer observed or intervened in one of two prebeating arguments the inmate had with a prisoner present during the beating, the inmate never complained of threatened harm or requested protective custody, and an investigatory report revealed nothing to suggest that the officers were aware, or should have been aware, of any future threat to his safety. (Lansing Correctional Facility, Lansing, Kansas)

U.S. District Court
AIDS
PRISONER ON
PRISONER
ASSAULT

Goss v. Sullivan, 839 F.Supp. 1532 (D.Wyo. 1993). An inmate who had been attacked by an inmate infected with HIV (Human Immunodeficiency Virus) brought a civil rights action against various officials claiming violation of the Eighth and Fourteenth Amendment rights. The district court found that the complaint failed to state a claim for violation of equal protection and the plaintiff inmate failed to establish a requisite deliberate indifference to a pervasive risk of harm necessary to show a violation of the Eighth Amendment. (Wyoming State Penitentiary, Rawlins)

U.S. District Court
SUICIDE
WRONGFUL DEATH

Hare v. City of Corinth, Miss., 814 F.Supp. 1312 (N.D. Miss. 1993). The estate of a detainee who committed suicide while in jail sued city and custodial officials, under Section 1983 and the Mississippi Wrongful Death Act. Cross motions for summary judgment were made. The district court found that material issues of fact, precluding summary judgment, existed as to whether the detainee displayed a particular vulnerability to suicide, triggering obligations of custodial officers to provide special care. The officer in charge had made sure that the detainee did not have shoe laces or a belt, had considered

removing the blanket that the detainee later tore up to fashion a noose but decided she lacked the strength to use the blanket as a suicide device, and had asked that she be watched by a dispatcher. However, the detainee was in jail for the first time, was under the influence of a chemical drug, and exhibited severe mood swings including distraught and frantic activity. In addition, she sat in a fetal-type position during one interview, attempted to destroy a videotape of her interview and said she would kill herself if she had to stay in jail another night. Although the detainee was chemically dependent, undergoing withdrawal and depression, had made a suicide threat and exhibited unstable behavior, she was placed alone in a cell not allowing full-time observation. Material issues of fact existed on the question of whether the municipality had acquiesced in policy or custom of inaction on the question of suicide prevention; there had been another suicide in the same jail three months previously, and there was no attempt made to adopt policies or procedures to prevent subsequent suicides. However, the evidence did not support a claim of wrongful death involving the jail suicide; the officer's act of placing the detainee in jail overnight could not have caused the development of an irresistible impulse leading the detainee to take her own life. (Corinth Jail, Mississippi)

U.S. District Court
SUICIDE

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

U.S. District Court
SUICIDE

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
PRISONER ON
PRISONER
ASSAULT

King v. Fairman, 997 F.2d 259 (7th Cir. 1993). An inmate sued corrections officials under Section 1983 for failing to prevent injuries inflicted by other inmates. The U.S. District Court entered judgment notwithstanding the verdict for the prison officials, and the inmate appealed. The appeals court found that the transfer of the inmate to a correction facility that housed members of a gang to which the inmate had once belonged, despite a known threat to the inmate's safety, was not "cruel and unusual punishment" for the purpose of the inmate's Section 1983 action. The transfer was necessary because the inmate's admitted liaison with a female staff member had compromised security at the prison from which he was transferred. As a result, prison officials were not "deliberately indifferent" to the inmate's safety. (Illinois Department of Corrections)

U.S. Appeals Court
PRISONER ON
PRISONER

Knight v. Gill, 999 F.2d 1020 (6th Cir. 1993). An inmate who was assaulted by a cellmate brought a civil rights action against prison officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds, and they appealed. The appeals court found that the prison official did not act with deliberate indifference to the inmate's safety when he denied the inmate's request for transfer to another cell, and was entitled to qualified immunity. The inmate had refused protective supervision pending a hearing to decide whether to assign him to a different cell, and the official did not have knowledge that the cellmate was a threat to the inmate's safety. Also, prison officials did not act with deliberate indifference to the safety of the inmate in allegedly failing to properly train and supervise the activity of prison personnel, entitling the officials to qualified immunity. It was noted that the prison had the second lowest assault rate in the state prison system. (Luther Luckett Correctional Complex, Oldham County, Kentucky)

U.S. Appeals Court
PROTECTION FROM
HARM

Latimore v. Johnson, 7 F.3d 709 (8th Cir. 1993). An inmate brought a Section 1983 action against a county attorney to recover for injuries caused by a prison attack after the attorney disclosed to the media that the inmate had agreed to testify against gang members in a murder case. The U.S. District Court denied the attorney's motion for summary judgment, and he appealed. The appeals court, reversing and remanding with direction, found that the attorney was entitled to qualified immunity because the attorney could not have known that his actions would violate such a right, and the nature of his position would not put him on notice of potential Section 1983 liability for his actions. (State Correctional Facility, Stillwater, Minnesota)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Latimore v. Widseth, 986 F.2d 292 (8th Cir. 1993), cert. denied, 114 S.Ct. 1124. An inmate brought a Section 1983 action against a prosecutor to recover for injuries caused by a prison attack after the prosecutor revealed to the media that the inmate had agreed to testify against gang members in a murder case. The U.S. District Court denied the prosecutor's motion for summary judgment, and he appealed. The court of appeals, affirming and remanding, found that the prosecutor was not entitled to qualified immunity in the inmate's 1983 action for being assaulted as a result of the prosecutor's statements. The plea agreement indicated that the inmate's statements regarding roles of the members in the murder were to remain confidential unless the inmate was called as a government witness. The prosecutor knew or should have known that the public revelation regarding the inmate's willingness to testify would likely lead to a prison attack. The court also found that whether the prison attack against the inmate was caused by the prosecutor's statements to the media involved questions of fact precluding summary judgment, although the inmate's name was on a witness list and his willingness to cooperate was matter of public record of the plea hearing. (Minnesota)

U.S. District Court
AIDS

Marcussen v. Brandstat, 836 F.Supp. 624 (N.D. Iowa 1993). An inmate filed a Section 1983 civil rights action against a warden of a correctional facility and a lieutenant and nurse employed at the facility. He alleged that his constitutional rights were violated when prison officials assigned a HIV-positive (Human Immunodeficiency Virus) inmate to his cell and allowed that inmate to use his toiletries. The defendants filed a motion for summary judgment. The district court found that the defendants were entitled to summary judgment on the inmate's allegations that he was exposed to the risk of contracting AIDS from the use of his drinking cup and cigarette roller by the allegedly HIV-positive inmate because the possibility of transference of AIDS through these means was too remote. The defendants were granted summary judgment on the inmate's claim that simply housing him with an allegedly HIV-positive inmate violated his constitutional rights. The defendants were granted summary judgment on the inmate's claim of exposure to pervasive risk of harm from allowing other inmates to use sharp objects, such as a razor, that could cause blood-to-blood transmission of HIV, because rules were in place at the correctional facility prohibiting behavior by inmates that could result in exposure to AIDS or HIV and stating that inmates were responsible for their personal property. The defendants were granted summary judgment on the basis of qualified immunity since the officials' behavior was in line with standards stated in existing precedent, and so could not have violated the clear contours of any of the inmate's rights. (North Central Correctional Facility, Rockwell City, Iowa)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Mooreman v. Sargent, 991 F.2d 472 (8th Cir. 1993). An inmate brought a Section 1983 action alleging that prison officials violated his right to be free from cruel and unusual punishment by acting with reckless disregard for his safety from attack by other inmates. The U.S. District Court dismissed the complaint and the inmate appealed. The appeals court, affirming the decision, found that prison officials did not act with reckless disregard of the inmate's right to be free from sexual attacks by other inmates in violation of the Eighth Amendment's proscription against cruel and unusual punishment, even though the inmate was raped in a cell by one or more of three inmates on four consecutive nights. The inmate presented no evidence that what happened to him occurred with any frequency. In addition, the inmate told officials during his classification upon coming to the prison that he had no reason to need protection, and as soon as the inmate told officials of the problem, he was placed in protective custody. (Arkansas Department of Correction, Cummins Unit)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

official knew of the threat to the inmate by fellow prisoners yet disregarded it, despite the availability of relatively effortless ways of addressing the threat, and whether that conduct amounted to a conscious lack of concern or aloofness, precluding summary judgment. (Ohio Department of Rehabilitation and Corrections)

U.S. Appeals Court
MEDICAL CARE
SUICIDE

Reed v. Woodruff County, Ark., 7 F.3d 808 (8th Cir. 1993). Survivors of a prisoner who hung himself in his cell brought a Section 1983 suit alleging that the prisoner's constitutional rights were violated. The U.S. District Court denied summary judgment to the defendant jail officials and police officer, and they appealed. The appeals court, reversing and remanding with instructions, found that the plaintiffs failed to establish a claim of deliberate indifference directed at the police officer who discovered the body. Although they claimed that the officer, who was an emergency medical technician, should have attempted artificial resuscitation before finally determining that the prisoner was dead, there was no evidence that an attempt would have succeeded. (Woodruff County Jail, Arkansas)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Ribble v. Lucky, 817 F.Supp. 653 (E.D. Mich. 1993). A prisoner brought an action against an assistant prison librarian, alleging violation of the Eighth Amendment. The district court found that the assistant prison librarian did not violate the Eighth Amendment rights of the inmate who was sent out on an erroneously sent "call-out" to the law library and was then stabbed by another inmate, absent evidence from which it could be implied that the librarian was deliberately indifferent to the risk of harm. The librarian was unaware of the death threats against the inmate and there was no evidence from which deliberate indifference on the librarian's part might be inferred. (State Prison of Southern Michigan, Jackson, Michigan)

U.S. District Court
SUPERVISION
SUICIDE

Russell v. Knox County, 826 F.Supp. 20 (D.Me. 1993). A Section 1983 action was brought against a county, the sheriff and county corrections department officials' for an inmate's death by suicide. On the defendants' motion for judgment as a matter of law at the close of the plaintiff's case, the district court found that the county was not liable for the inmate's death, based on an alleged county policy of allowing all involuntary detainees to retain their shoelaces. In addition, the actions of a line corrections officer at the county jail, in allegedly delaying his inspection of the inmate's cell as part of a suicide watch for four minutes while he went to the bathroom, did not manifest any "deliberate indifference" to the inmate's constitutional rights, such as might support a Section 1983 action against the officer when the inmate hanged himself in his cell. The officer had never been told anything by the inmate suggesting that he intended to commit suicide, and the officer was surprised that the inmate committed suicide. (Knox County Jail, Maine)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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
PROTECTION FROM
HARM

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

1994

U.S. District Court
FAILURE TO
PROTECT
PROTECTION FROM
HARM
THREATS
WRONGFUL DEATH

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

U.S. Appeals Court
PRISONER SUICIDE

Belcher v. City of Foley, Ala., 30 F.3d 1390 (11th Cir. 1994). An arrestee's estate sued a city, the chief of police, and three police officers under Section 1983 and the Alabama wrongful death statute, after the arrestee committed suicide while in jail at the police station. The U.S. District Court denied the individual defendants' motions for summary judgment based on qualified immunity in their individual capacities and they appealed. The appeals court, reversing and remanding, found that the police chief's actions and inactions with respect to policies and training in handling of suicidal inmates did not constitute deliberate indifference, thus entitling the chief to qualified immunity. It was noted that a previous suicide in the jail occurred seven years before the arrestee's, and steps had been taken after that to prevent future suicides. The court also found that steps taken by the police officers to prevent the arrestee from committing suicide were not so inadequate as to constitute deliberate indifference, as required to overcome their assertions of qualified immunity. At the time the arrestee committed suicide, law did not clearly establish that police officers' actions in leaving the inmate unguarded in a cell with barred doors and a means to hang himself, when they knew that the inmate had attempted suicide, constituted deliberate indifference to the inmate's taking of his own life. Furthermore, the officers did take steps to prevent the inmate from committing suicide, including placing him in a stripped-down cell and checking on him every five minutes. (Foley Police Station, Alabama)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Cherry v. Crow, 845 F.Supp. 1520 (M.D. Fla. 1994). The personal representative of the estate of a county jail inmate, who died while being treated in an infirmary for alcohol withdrawal, brought an action against the sheriff and the provider of health services for inmates and against a nurse alleging breach of contract and violation of Section 1983. The district court found that there was sufficient evidence that the inmate was an intended third-party beneficiary of a contract between the sheriff's department and the health care provider so as to permit the personal representative to bring a breach of contract claim against the provider and that the personal representative stated a Section 1983 cause of action against the provider and nurse. The allegations regarding the death of two inmates at the county jail while under medical supervision of the provider of health services were not scandalous and would not be stricken. The personal representative alleged the prior incidents not for the purpose of establishing that certain employees of the provider had a propensity to violate constitutional rights but to evidence a policy or custom of the police department and provider so as to render them liable under Section 1983. (Polk County Sheriff Department, Florida)

U.S. Appeals Court
MEDICAL CARE
SUICIDE

Estate of Hocker By Hocker v. Walsh, 22 F.3d 995 (10th Cir. 1994). In a prison suicide case the U.S. District Court granted summary judgment for a county and sheriff. The administrator of the estate of the deceased detainee appealed. The appeals court, affirming the decision, found that the county and sheriff were not deliberately indifferent to the detainee's serious medical needs by establishing a policy of admitting unconscious, intoxicated arrestees; rather, the record showed that the prisoner was neither admitted to the jail in an unconscious state nor observed to be unconscious after being admitted. The jail staff had no reason to suspect that the detainee, who was intoxicated or under the influence of drugs, posed a risk of suicide, as required to support a claim that the county and sheriff were deliberately indifferent to the detainee's serious medical needs. (Cleveland County Detention Center, Norman, Oklahoma)

U.S. Supreme Court
PRISONER ON
PRISONER
ASSAULT
PROTECTION FROM
HARM

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

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Gibbs v. Franklin, 18 F.3d 521 (7th Cir. 1994). A prisoner brought a Section 1983 action against guards for alleged failure to intervene in an attack by another inmate. The U.S. District Court entered judgment on jury verdict for the guards and the prisoner appealed. The court of appeals found that jury instructions accurately stated law. The jury was told that guards would be liable for one prisoner's attack on another if guards acted or failed to act with intent to inflict injury, and that deliberate indifference was defined as acting or failing to act when impending injury was "readily preventable." (Indiana State Prison Farm, Putnamville, Indiana)

- U.S. Appeals Court
FAILURE TO
PROTECT
FAILURE TO
SUPERVISE
SUICIDE
- Hare v. City of Corinth, MS, 22 F.3d 612 (5th Cir. 1994). The estate of a pretrial detainee who committed suicide brought a civil rights action against jail officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds, and the officials appealed. The appeals court noted that, at the time the pretrial detainee committed suicide in 1989, jail officials were under a clearly established constitutional duty to respond to the detainee's serious medical needs, including suicidal tendencies and attempts to commit suicide, with at least more than deliberate indifference. The pretrial detainee committed suicide in her cell by hanging herself with a blanket she had torn into strips. The court found genuine issues of material fact as to whether jail officials knew or should have known of the detainee's vulnerability to suicide. She was placed in an isolated cell which was not visually monitored and which could not be reached by a trustee or the dispatcher on duty. The court precluded summary judgment in favor of the officials on qualified immunity grounds. (Corinth City Jail, Mississippi)
- U.S. Appeals Court
SUICIDE
- Hare v. City of Corinth, MS, 36 F.3d 412 (5th Cir. 1994). The estate of a pretrial detainee who committed suicide brought a Section 1983 action against jail officials. The U.S. District Court denied the officials' motion for summary judgment on qualified immunity grounds and the officials appealed. The appeals court found that when the pretrial detainee committed suicide in 1989, jail officials were under a clearly established constitutional duty to provide reasonable care for serious medical needs, unless the deficiency reasonably served a legitimate governmental objective. The court ruled that whether the officials denied reasonable medical care for the pretrial detainee and whether a legitimate governmental objective justified the denial were questions of fact precluding summary judgment on the issue of qualified immunity. (Corinth City Jail, Mississippi)
- U.S. Appeals Court
JUVENILES
MEDICAL CARE
SUICIDE ATTEMPT
- Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir. 1994) U.S. cert. denied 115 S.Ct. 199. A juvenile detainee, by his limited conservator, brought Section 1983 and negligence claims seeking damages for injuries sustained in an attempted suicide. The appeals court, affirming in part and reversing in part, found that any violation of the Juvenile Justice Act in temporarily lodging the juvenile in an adult jail was not the proximate cause of his attempted suicide because the juvenile was scrupulously shielded from deleterious influences associated with adult facilities. The court also found that the prison officials' failure to take special precautions to protect the juvenile detainee from suicide was not deliberate indifference to his serious medical needs, as required to establish a Fourteenth Amendment violation. Juvenile detainees were not, as a class, particularly vulnerable to suicide and entitled to special screening for suicidal tendencies. (Madison County Detention Center, Kentucky)
- U.S. District Court
OFFICER ON
PRISONER
ASSAULT
- Huffman v. Fiola, 850 F.Supp. 833 (N.D. Cal. 1994). A prisoner filed a federal civil rights complaint against prison officials and police officers and sought to proceed in forma pauperis. The district court found that the prisoner stated a cognizable claim against police officers who allegedly watched and refused to assist or prevent an alleged sexual assault of the prisoner in a booking cell. (Pacifi Grove Police Department and Monterey County Sheriff's Department, California)
- U.S. District Court
OFFICER ON
PRISONER
ASSAULT
- Miller v. Fairman, 872 F.Supp. 498 (N.D. Ill. 1994). A pretrial detainee brought a civil rights action against jail administrators and jail guards alleging that conditions of his confinement violated his due process rights. The district court found that the pretrial detainee's allegations that he was severely beaten by one jail guard while another guard watched were sufficient to state a civil rights claim against guards in their individual capacities based on a violation of his due process right against being subjected to excessive force amounting to punishment. (Cook County Jail, Illinois)
- U.S. Appeals Court
JUVENILES
SUICIDE ATTEMPT
- Myers v. County of Lake, Ind., 30 F.3d 847 (7th Cir. 1994), cert. denied, 115 S.Ct. 666. A county was found by a jury to have negligently failed to prevent a juvenile delinquent's suicide attempt and damages were awarded to the parent and juvenile by the U.S. District Court. The county appealed. The appeals court found that Indiana law requires state institutions to use reasonable care to prevent their wards from committing suicide. The court also found that whether the county negligently provided so few funds to the juvenile detention center that the staff could not exercise reasonable care to prevent the juvenile's suicide attempt was a jury question under Indiana law. Although Indiana recognizes intervening cause, reckless disregard of one's own safety, and incurred risk as defenses to a negligence claim, Indiana would probably not recognize the intentional efforts to commit suicide as a defense. Both the parent and child were entitled to separate per person awards under the statute limiting the government's liability. (Lake County Juvenile Center, Indiana)
- U.S. District Court
SUICIDE
- Plasko v. City of Pottsville, 852 F.Supp. 1258 (E.D. Pa. 1994). The estate of a pretrial detainee brought claims against a city and city officials under Sections 1983, 1985, and 1986, under the Eighth and Fourteenth Amendments, and under Pennsylvania law, to recover damages resulting from the pretrial detainee's suicide. On motions to dismiss, the

district court found that the estate of the pretrial detainee did not state a claim under Section 1983 against jail officials for failure to prevent the detainee's suicide, absent an allegation of facts concerning the mental history of the detainee or other facts showing that jail officials knew or should have known the detainee posed a particular risk of suicide and that they disregarded those risks. Without any reason to believe that the detainee was potentially suicidal, the fact that officials did not take a belt from the detainee while he was in a holding cell amounted to nothing more than negligence. The state law claims were also dismissed without prejudice to the plaintiff's right to reassert them as supplemental claims in an amended complaint in district court or in state court if no amended complaint was filed. (Pottsville Police Department, Pennsylvania)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Redd v. Gilless, 857 F.Supp. 601 (W.D. Tenn. 1994). An inmate sued county jail officials in forma pauperis alleging that his placement in punitive segregation with inmates who had already attacked and harmed him violated his Eighth Amendment right against cruel and unusual punishment. The district court found that allegations that prison officials confined the inmate in punitive segregation with the same inmates who had already attacked him and harmed him stated a claim for violation of the Eighth Amendment's prohibition against cruel and unusual punishment, if the inmate could show a serious risk that the fellow inmates would attack him again. (Shelby County Criminal Justice Complex, Tennessee)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. District Court
OFFICER ON
PRISONER
ASSAULT
USE OF FORCE

Shearin v. Correction Officer Pennington, 867 F.Supp. 1250 (E.D.Va. 1994). A state inmate brought a Section 1983 action against a corrections officer and other corrections employees, alleging that the officer committed assault and battery against the inmate and that the employees failed to protect the inmate, thereby subjecting the inmate to cruel and unusual punishment in violation of the Eighth Amendment. Both parties moved for summary judgment. The district court found that the inmate was not subjected to cruel and unusual punishment under the Eighth Amendment by the actions of the corrections officer in thrusting a metal window rod through the bars of the inmate's cell and charging at the inmate, after the inmate threw dissolved human waste onto the officer from his cell. The inmate was not subjected to the use of excessive force when the officer verbally provoked the inmate; the inmate was subjected to no further physical contact. There was no evidence that the inmate was physically harmed, and the officer acted to defend himself, rather than with a culpable state of mind. In addition, the inmate was not subjected to cruel and unusual punishment under the Eighth Amendment by the actions of a higher-ranking officer after the incident. The officer visited the inmate a few minutes after the incident and immediately presented the inmate to a physician for treatment. The officer protected the inmate from further harm, and moved to discipline the lower-ranking officer. (Powhatan Correctional Facility, Virginia)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Smith v. Ullman, 874 F.Supp. 979 (D.Neb. 1994). An inmate brought a civil rights action against a corrections officer as a result of an alleged attack on him by four other inmates. The district court found that the corrections officer was not liable to the inmate on the theory of a violation of the Eighth Amendment right to be free from violent assaults by fellow inmates, though the inmate had advised the officer prior to the assault that he had been threatened by other inmates. It was not shown that the inmate told the officer that specific inmates had threatened him or that he requested removal. The officer told the inmate that he would watch out for him, and returned to the control center and examined

the logbook for earlier entries concerning the alleged threat. He found no such entries and took no further action. (Lincoln Correctional Center Evaluation Unit, Nebraska)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Stark v. County of Westchester, 862 F.Supp. 67 (S.D.N.Y. 1994). An inmate who was stabbed by a fellow inmate brought an action against the county and department of corrections. On the defendants' motion for summary judgment, the district court found that the fact that protective procedures established at the county jail failed in this particular instance was inadequate to support liability of the county or its department of corrections. (Westchester County Jail, New York)

U.S. Appeals Court
PRISONER SUICIDE

Title v. Jefferson County Com'n., 10 F.3d 1535 (11th Cir. 1994). In an action arising out of two prisoner suicides, the U.S. District Court granted the defendants' motion for summary judgment, and the plaintiffs appealed. The appeals court found that the county did not act with deliberate indifference to the prisoners' suicide risk, as required to establish a violation of the Eighth or Fourteenth Amendment in the prisoners' suicide. The prisoners were screened by jail medical personnel and neither exhibited suicidal tendencies. Alleged weaknesses in the screening of inmates for suicidal tendencies, without more, did not amount to a showing of deliberate indifference toward the prisoners' rights. (Jefferson County Jail, Alabama)

U.S. Appeals Court
BRUTALITY
OFFICER ON
PRISONER
ASSAULT

Wilkens v. Moore, 40 F.3d 954 (8th Cir. 1994). Prison guards appealed the denial by the U.S. District Court of the guards' motion for summary judgment in a civil rights action brought by a prisoner against them. The appeals court, affirming the decision, found that the jury could draw reliable inferences as to whether the prison guards' use of force on the prisoner could have been thought to be necessary, or instead exceeded the amount of force that was justified under the circumstances. The prison guards were not entitled to a defense of qualified immunity on a deprivation of clothing claim. The prison guards placed the inmate naked in a strip cell for 22 hours, where the guards allegedly verbally and physically abused the inmate continuously. The district court determined that the inmate's assault claim against the guards was a fact issue for trial, and the prison guards did not appeal this determination. (Potosi Correctional Center, Missouri)

1995

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Abrams v. Hunter, 910 F.Supp. 620 (M.D.Fla. 1995). An inmate filed a civil rights suit against a jail officer and sheriff for injuries he received in a beating by other inmates while he was confined. The district court granted the defendants' motion for summary judgment, finding that the inmate failed to show that the jail officer knew about the assault or that there was a causal connection with the sheriff or a history of widespread abuse. The inmate had alleged that he was placed in a general population cell which had four video cameras for security purposes, and that while in the cell he was attacked by three inmates for a period of fifteen minutes but that no staff responded to stop the fight. (Collier County Jail, Florida)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Adams v. Drew, 906 F.Supp. 1050 (E.D.Va. 1995). A pretrial detainee who was HIV positive brought a civil rights suit against prison officials, alleging the officials violated his right of privacy and failed to protect him from other inmates. The district court granted summary judgment for the officials, in part, ruling that the detainee did not have a right to privacy of medical information where it was alleged that prison medical staff inadvertently allowed other inmates to discover that the prisoner was receiving AZT. The court also found that prison officials who did not know that the detainee was in danger of being attacked by other inmates could not be held liable under the due process clause. However, the court found that summary judgment was precluded for the detainee's claim that officials displayed deliberate indifference to his safety. The inmate was attacked by other inmates after he had asked officials that he be moved from the cell block in which he was incarcerated because he believed he would be assaulted. (Virginia Beach Correctional Center, Virginia)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Benyi v. Broome County N.Y., 887 F.Supp. 395 (N.D.N.Y. 1995). A state inmate filed pro se federal civil rights claims against local and county officials alleging failure to adequately protect his personal security. The court found that the inmate raised triable issues of fact for his claim that officials were deliberately indifferent to his safety. Another inmate had threatened to kill the plaintiff because of sex crimes charged against him; the plaintiff was moved to another part of the facility and other inmates were told that the plaintiff was charged with burglary. The plaintiff sent three notes about "potential trouble" to the facility main desk and shortly thereafter he was assaulted by another inmate, knocked unconscious for an hour, and suffered injuries to his ear, eye and trachea. The inmate had also received a threatening letter from "vigilantes" in the facility. (Broome County Correctional Facility, New York)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Caldwell v. District of Columbia, 901 F.Supp. 7 (D.D.C. 1995). A prisoner who was attacked by fellow inmates filed a § 1983 action against the District of Columbia and corrections officials. The district court dismissed the case, finding that the prisoner failed to state a § 1983 claim that officers violated his rights by failing to protect him from other inmates. The court also held

that the prisoner failed to state a § 1983 claim against the District of Columbia absent evidence that an emergency policy was inadequate or that officers were inadequately trained. The court found that a fifty minute delay between the time the prisoner was attacked and the time medical attention was delivered did not amount to deliberate indifference because correctional officers' conduct, although possibly negligent, was not wanton. The officers took steps to ensure that the prisoner received proper medical attention. The court held that the alleged negligence of corrections officers in the opening and closing of cell doors did not rise to the level of deliberate indifference required to merit constitutional relief. (District of Columbia Jail)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Fickes v. Jefferson County, 900 F.Supp. 84 (E.D.Tex. 1995). A pretrial detainee brought a § 1983 action against a county, sheriff, and corrections officials. The district court granted summary judgment for the defendants in part and denied it in part. The court found that a corrections officer was at most negligent in leaving mops and brooms in a cell; the detainee alleged that other inmates beat him with the mops and brooms. The court noted that bringing an end to the flood that had disrupted several cells was a legitimate government purpose that justified bringing the mops, brooms and squeegees into the cell. The court held that genuine issues of fact remained as to whether an officer knew of the ongoing attack when he made his rounds and chose to do nothing or whether the altercation erupted after the officer made his rounds, precluding summary judgment. The court held that genuine fact issues remained as to whether officers used excessive force when removing the detainee to another cell by continuing to exert force directly on the detainee's neck by means of a headlock after the detainee announced he had injured his neck, precluding summary judgment. (Jefferson County Jail, Texas)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Gangloff v. Poccia, 888 F.Supp. 1549 (M.D.Fla. 1995). After he was attacked by another prisoner, a prisoner filed a civil rights action against prison officials. The district court granted the defendants' motion to dismiss. The court found that a cursory statement by the prisoner that he had informed a prison guard of a security hazard posed by another prisoner did not show that prison officials had foreknowledge of the subsequent attack on the prisoner, despite his contentions that officials should have known at once that he was labelled as an informant and would be subject to attack from other prisoners. The court found that the prisoner's claim that he might be incarcerated at the same institution as the prisoner who attacked him did not establish the requisite causal connection to a violation of his constitutional rights.

The court ruled that Florida state regulations on reporting prison disciplinary infractions did not create a protectible liberty interest for the prisoner in having a criminal action brought against another prisoner; the prisoner had claimed that the failure of officials to investigate or report the other prisoner's actions was the foreseeable cause of the subsequent attack on him. (Charlotte Correctional Institution, Florida)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Gibbs v. Franklin, 49 F.3d 1206 (7th Cir. 1995). An inmate brought a civil rights action under Section 1983 against prison guards for alleged failure to intervene in an attack by other inmates. The U.S. District Court entered judgment on the verdict for the guards and the inmate appealed. The appeals court affirmed, but the Supreme Court vacated and remanded. On remand, the appeals court, affirming the decision, found that, in the suit against prison guards for violation of the inmate's Eighth Amendment rights on the grounds that they witnessed the inmate's beating by other inmates but refused to intervene, an instruction that jurors could infer that guards acted with deliberate indifference if they had actual knowledge of any impending injury and that injury, or further injury was "readily preventable" was proper despite the contention that the court should have used the term "reasonably preventable." A guard's intent is not to be determined by reference to objective standards of reasonableness. "Readily preventable" language simply addressed the guards' subjective intent and did not define the scope of their duties or obligations towards inmates. (Indiana State Prison Farm, Putnamville, Indiana)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
THREATS
INTIMIDATION

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 of being irrational or wholly incredible; merely unlikely allegations do not satisfy this demanding test. (Clements Unit, Texas Department of Criminal Justice)

U.S. District Court
THREATS

Ishaaq v. Compton, 900 F.Supp. 935 (W.D.Tenn. 1995). An inmate filed a § 1983 suit against state prison officials seeking damages for violation of his constitutional rights which allegedly resulted from denial of his grievances, a disciplinary conviction, verbal threats and a transfer. The district court dismissed the case, finding that denying the inmate's request to telephone his attorney did not deny him the right of access to courts. The court held that neither threats by fellow inmates nor verbal harassment were cruel and unusual punishment. Another inmate had displayed a homemade shank and threatened the inmate. (West Tenn. High Security Facility)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Jones v. Kelly, 918 F.Supp. 74 (W.D.N.Y. 1995). An inmate filed a civil rights suit against corrections officials alleging that they knowingly placed his life in danger by transferring him to a certain correctional facility. After his transfer the inmate's cell was set on fire and he was assaulted by other inmates. The district court granted summary judgment for the defendants, finding that they had taken appropriate measures at every reasonable opportunity to ensure the inmate's safety, although the risk of harm to the inmate was substantial and the officials had knowledge of the risk. (Attica Correctional Facility, New York)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Jones v. Banks, 878 F.Supp. 107 (N.D.Ill. 1995). An inmate brought a Section 1983 action against a correctional officer for alleged violation of his Eighth Amendment rights stemming from an attack by another inmate. The district court found that there were genuine issues of material fact, precluding summary judgment for the officer, as to whether the officer knew of the risk to the inmate from other prisoners or had received a specific note requesting that his door be kept closed. The court noted that the inmate's showing that he was a known homosexual, self-described as a "drag queen," and that he was often in danger from other inmates because they wanted to have sex with him or injure him was sufficient evidence of serious risk to safety to avoid summary judgment. In addition, the court found that the inmate's claim of fear and alarm at being attacked was sufficient to show the required injury for the Section 1983 claim even though the inmate suffered no actual physical injury as a result of the attack. (Stateville Correctional Center, Illinois)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

City Dept. of Corrections, 904 F.Supp. 217 (S.D.N.Y. 1995). An inmate brought a § 1983 action against a city department of corrections claiming violation of his Eighth Amendment rights. The district court denied the defendants' motion for summary judgment, finding genuine issues of material fact existed as to whether prison guards acted intentionally or with reckless disregard for the inmate's right to be free from a risk of harm from other inmates. The inmate claimed that he was slashed across the face by another inmate, requiring sixty stitches. The inmate claimed that prison guards were aware of the risk to him. (Otis Bantum Correction Center, Rikers Island, New York City)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Kunkel v. Stockwell, 887 F.Supp. 215 (E.D.Mo. 1995). A prisoner filed a civil rights suit against prison officials alleging violation of his Eighth Amendment rights resulting from an assault by another inmate. The district court granted summary judgment for the officials, finding that the inmate failed to show that the officials were aware of the danger posed by the other inmate, and that they acted reasonably to avert a risk of danger. The court noted that liability for an Eighth Amendment violation does not necessarily attach simply because precautions taken by a prison guard did not ultimately prevent harm to a prisoner. The plaintiff had alleged that a prison guard knew that another inmate was his enemy simply because the guard worked on the unit where both inmates resided, which the court found insufficient to state a claim. When the guard became aware of a risk when he was escorting the two inmates to a medical unit he ordered them stay within his sight and both inmates' hands were cuffed behind their backs; one inmate slipped his handcuffs under his feet and attacked the plaintiff before he was stopped by the guard. (Potosi Corr. Center, Missouri)

U.S. District Court
SUICIDE ATTEMPT

Litz v. City of Allentown, 896 F.Supp. 1401 (E.D.Pa. 1995). The guardian of a pretrial detainee who had attempted suicide brought a civil rights action against a city and its police officials. The district court found that evidence did not show that the detainee had a particular vulnerability to suicide necessary for liability under § 1983 and that even if individual officers were liable, the municipality was not liable absent some showing that it somehow communicated a message of tacit approval or acquiescence in attempted suicides. The court also found that any improper action by the police chief was at most negligence, which would not support a §

1983 claim. The court noted that the actions of the detainee, who was intoxicated and was asking why he could not go home, did not indicate a possibility that he was going to harm himself for the purpose of showing a strong likelihood--rather than a mere possibility--that self-inflicted harm would occur. The court also noted that the city had taken measures to prevent suicides. The detainee had attempted to hang himself using his socks in a holding cell at the police department. (Allentown Police Department, Pennsylvania)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

MacKay v. Farnsworth, 48 F.3d 491 (10th Cir. 1995). A prison inmate brought a Section 1983 action against prison guards, alleging that they violated his Eighth Amendment right to be free from cruel and unusual punishment by not physically intervening in a fight between him and another inmate. The U.S. District Court granted the guards' motion for summary judgment and the inmate appealed. The appeals court, affirming the decision, found that the requisite mental state in the prisoner's Section 1983 action alleging that prison officials did not respond with physical use of force to protect the inmate from harm by another inmate was that of deliberate indifference, rather than that of malicious and sadistic. In addition, there was no "deliberate indifference" on the part of prison officials who failed to physically intervene in the fight between the plaintiff inmate and another inmate who had a weapon and, thus, the plaintiff could not recover under Section 1983. The guards were successful in attempting to break up the fight verbally. The guards observed that the plaintiff and other inmate were evenly matched and that the other inmate's weapon was ineffective, and the guards called for additional staff and medical personnel and thus were preparing to intervene once sufficient staff were available in accordance with prison policy. (Utah State Prison)

U.S. District Court
THREATS

Maclean v. Secor, 876 F.Supp. 695 (E.D. Pa. 1995). An inmate brought an action against prison officials alleging his rights were violated when he was threatened and placed in administrative detention. On the officials' motion for summary judgment, the district court found that the prison officials did not violate the Eighth Amendment's ban on cruel and unusual punishment or substantive due process under the Fifth Amendment by verbally threatening the inmate, even if the threats were based on the inmate's status as a known sex offender. In addition, the inmate's allegation that charges against him were fabricated did not state a due process claim against prison officials, absent an allegation that the charges were filed in retaliation for his exercise of a constitutional right or that his initial hearing before the disciplinary committee failed to comport with the requirements of due process. (Federal Correctional Institution, Schuylkill, Pennsylvania)

U.S. District Court
PRISONER ON
PRISONER ASSAULT
USE OF FORCE

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 that double-celling and inmate assaults did not rise to the level of an 8th 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. (Pelican Bay State Prison, California)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

McCoy v. Webster, 47 F.3d 404 (11th Cir. 1995). An inmate who was beaten by other inmates after he was transferred into a cell block from a holding cell brought a suit against a sheriff and deputy sheriff, asserting a Section 1983 claim and various state tort claims. The U.S. District Court found that the deputy sheriff was not entitled to qualified immunity and denied his motion for summary judgment on all the claims. The sheriff was granted summary judgment on the Section 1983 claim, but his motion was denied as to the state law claims. Both the deputy and the sheriff appealed. The appeals court found that the deputy sheriff was entitled to qualified immunity from the inmate's Section 1983 claim that the deputy was deliberately indifferent to the inmate's personal safety when the deputy failed to communicate to an oncoming guard that he had placed the inmate in a holding cell because of a threat to his life. The deputy was acting within the scope of his discretionary authority, and he could reasonably believe that his failure to communicate the situation to the oncoming guard did not violate constitutional law. (Richmond County Jail, Georgia)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Miller v. Neathery, 52 F.3d 634 (7th Cir. 1995). A civil rights action was brought under Section 1983 against correctional officers, alleging cruel and unusual punishment of an inmate in violation of the Eighth Amendment, in connection with the inmate being sprayed with chemicals by another prisoner. The U.S. District Court entered judgment on a jury verdict against the officers and they appealed. The appeals court, reversing and remanding, found that the jury instructions, which failed to define or otherwise explain the term "recklessly," failed to adequately inform the jury that, at a minimum, it had to determine that the officers knew of and disregarded an excessive risk to the inmate's health or safety in order to find the officers liable. In addition, the inadequacy was unfairly prejudicial to the officers, particularly as the jury's assessment of punitive damages did not demonstrate that it found the officers deliberately indifferent for purposes of an Eighth Amendment analysis, and the record did not establish that the jury understood that a verdict against the officers had to rest at least on a determination that each officer knew that the inmate was facing a substantial risk of serious harm and failed to take reasonable steps to abate that risk. (Stateville Correctional Center, Illinois)

U.S. District Court
SUICIDE

Mullins v. Stratton, 878 F.Supp. 1016 (E.D. Ky. 1995). Action was brought against jailers under a civil rights statute and state law for failing to take action to prevent an inmate's suicide. On a motion by the defendants for summary judgment, the district court found that no policy or custom amounting to deliberate indifference was shown to have caused the inmate's suicide for purposes of liability of jail officials in their official capacities under Section 1983. The county detention center had in effect a policy and procedure manual which provided for the care and treatment of suicidal inmates, providing for administrative segregation and observation on 20 minute intervals. In addition, the county jailer testified that he had received 40 hours of inmate care training and all correction officers were required to receive 16 hours of training annually. The court also found that the county jail officials were not shown to be deliberately indifferent to the serious medical needs of the inmate for purposes of liability under the Eighth Amendment, even assuming that they should have recognized the scar on the inmate's wrist as an unsuccessful suicide attempt, where there was no evidence that the jailers were aware of the inmate's suicidal state of mind or his previous suicide attempts. (Pike County Jail, Kentucky)

U.S. District Court
PROTECTION FROM
HARM

Nettles v. Griffith, 883 F.Supp. 136 (E.D. Tex. 1995). A prisoner who was placed in administrative segregation without a hearing and was injured when he exited his cell after it was set on fire, brought a Section 1983 action against the county sheriff and other officials. The district court found that the assignment of the prisoner to administrative segregation in a section of the jail designed primarily for the mentally imbalanced did not violate the Eighth Amendment's prohibition against cruel and unusual punishment. Although the prisoner was injured when exiting his cell after it was set on fire by other prisoners, no jail official perceived that the prisoner was subject to a serious risk of harm from fire, since fires were ubiquitous in the jail and had not previously caused serious injuries. (Jefferson County Detention Center, Beaumont, Texas)

U.S. District Court
DUTY TO PROTECT

Plumeau v. Yamhill Cty. Sch. Dist., 907 F.Supp. 1423 (D.Or. 1995). A student who was sexually abused by a janitor sued the school district and the janitor claiming that the school district had an affirmative duty to protect the student from the criminal actions of its employees. The district court found for the defendants, noting that the state's affirmative constitutional duty to protect only arises with respect to particular individuals, such as those persons the state has taken into its custody such as prison inmates or involuntarily committed mental patients. (Yamhill County School District #40, Oregon)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Price v. Sasser, 65 F.3d 342 (4th Cir. 1995). An inmate brought an action against a sheriff under § 1983 to recover for injuries sustained when two other inmates assaulted him. The district court entered judgment against the inmate and the appeals court affirmed, finding that the sheriff was entitled to qualified immunity. The appeals court noted that law governing the duty to protect inmates from other inmates was unclear when the assault occurred and that there was no showing that the sheriff had reason to know that this particular inmate was in danger. (Wayne County Jail, North Carolina)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Prosser v. Ross, 70 F.3d 1005 (8th Cir. 1995). An inmate brought a § 1983 action against a prison official claiming violation of his Eighth Amendment rights by the official's failure to prevent or stop an attack by another inmate. The district court denied summary judgment for the official and the appeals court reversed, finding that the official was entitled to qualified immunity as a matter of law. The appeals court found that a reasonable official would not have concluded that he was recklessly disregarding an inmate's safety by allowing a fellow inmate to take three steps toward the inmate's door, even though the fellow inmate subsequently attacked the inmate. The court also found that the official's failure to intervene in the attack was not objectively unreasonable where the attacker was armed and there were at least 12 inmates standing between the official and other guards. (Jefferson City Correctional Center, Missouri)

U.S. District Court
PRISONER SUICIDE

Pyka v. Village of Orland Park, 906 F.Supp. 1196 (N.D.Ill. 1995). The estate of an arrestee who committed suicide while in detention brought a civil rights action against a village and police

officers. An eighteen-year-old youth in police custody committed suicide by hanging himself from the bars of his cell with his t-shirt. The court found that the defendants were entitled to qualified immunity on claims against them in their official capacity, but the officer who put the arrestee in a chokehold was not entitled to immunity on the claim of excessive force, nor was immunity available for an officer who failed to intervene in the first officer's takedown of the arrestee. The court also found that the officers were not entitled to immunity on the claim that they struck the arrestee in violation of his right to be free from pretrial detention that constituted punishment; a videotape showed no sign of aggression or violence by the arrestee before the officer grabbed him and placed him in a chokehold. The court found that the officers were entitled to immunity on the claim of failure to provide medical care and that the village had no policy of deliberate indifference as to measures to prevent suicide. The municipality was not liable for the suicide of the arrestee based on its alleged failure to train police officers regarding suicide awareness absent any evidence that the municipality had a large suicide problem which it was ignoring or that statutes or regulations required officers either to perform CPR upon the arrestee after he was discovered hanging in his cell or to take suicide awareness classes. The court ruled that the arrestee's sister lacked standing and could not recover under § 1983 for loss of society and companionship. The court left the proximate cause issue to be determined by a jury. The court ruled that the officers were entitled to qualified immunity on the claim that they failed to process the arrestee for bail or allow bail to be posted in a timely fashion, because the right to bail was not a clearly established right at the time of the incident. (Overland Park Police Department, Illinois)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Randle v. Parker, 48 F.3d 301 (8th Cir. 1995). A prisoner who was twice attacked and beaten by a fellow inmate brought a federal civil rights action against prison guards alleging a violation of his Eighth Amendment rights based on a failure to protect him. The United States District Court entered a judgment against the guard and the supervising officer and appeal was taken. The appeals court found that a jury instruction that stated that guards could be found liable if they were aware or should have been aware of a risk of harm to a prisoner improperly stated the law and required a new trial following entry of judgment for the prisoner. The instruction allowed the jury to find liability under the objective standard of culpability, which has been rejected. (Cummins Unit, Arkansas Department of Correction)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT
STAFFING
SUPERVISION

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

U.S. District Court
OFFICER ON
PRISONER
ASSAULT

Sweatt v. Bailey, 876 F.Supp. 1571 (M.D. Ala. 1995). An arrestee sued an officer for civil rights violations in connection with a beating he received from the officer while in detention. The district court found that a limited exception to the general rule of qualified immunity was justified for the officer who lost his temper and summarily beat the arrestee who was talking on the phone at the time of the attack. The police chief was entitled to qualified immunity on a claim of failure to supervise the arresting officer who beat the arrestee where there was only a bare assertion by an expert witness that the chief took inappropriate action with regard to supervision. The district court found that the arrestee's statement, within the officer's hearing, that the officer is an "ass" should not provoke a violent reaction from the officer and does not fall within the "fighting words" doctrine. (Andalusia Police Station, Alabama)

U.S. Appeals Court
PRISONER ON
PRISONER
ASSAULT

Thornton v. Brown, 47 F.3d 194 (7th Cir. 1995). An inmate who was stabbed in an attack by other inmates brought a Section 1983 civil rights action against three corrections officers alleging violation of his right to be free from cruel and unusual punishment. The U.S. District Court entered judgment against the inmate. The inmate challenged key

factual findings on appeal as being clearly erroneous. The appeals court found that the factual finding that a correctional officer named as a defendant did not unlock a door to the area the inmate was cleaning before he was attacked by other inmates, was not a clear error in light of evidence that the officer was not in the cell house at the time of the attack, the officer followed a routine of leaving the key with the door officer, and in light of testimony that the door may have been opened by other prison officers throughout the day. In addition, findings that correctional officers did not witness the attack on the inmate were supported by testimony that a prison riot broke out shortly before the attack on the inmate and the officers had to stop a fight involving approximately 50 inmates. (Menard Correctional Center, Illinois)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Torrence v. Musilek, 899 F.Supp. 380 (N.D.Ill. 1995). A state prisoner filed a civil suit for damages alleging that prison officials failed to protect him from assaults by other prisoners in violation of his Eighth Amendment right to be free from cruel and unusual punishment. The district court granted summary judgment for the defendants, finding that the inmate failed to establish that they were deliberately indifferent to his safety, and that qualified immunity applied. According to the court, the failure of officials to more quickly remove the inmate from a yard where assaults by other prisoners occurred did not demonstrate deliberate indifference or an intent to punish the inmate; at worst, the allegations demonstrated that the officials performed their duties negligently. Two prisoners had written a letter informing a senior prison official that they would "kick someone's ass" if they were not transferred, but the court found that failure to transfer the prisoners or to protect a third prisoner from assaults was not indifference or recklessness. (Joliet Correctional Center, Illinois)

U.S. District Court
JUVENILES
SUICIDE

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

U.S. District Court
PRISONER SUICIDE

Vine v. County of Ingham, 884 F.Supp. 1153 (W.D.Mich. 1995). The personal representative for the estate of a detainee who died while in police custody sued a county, a city and various city and county staff and officials. The decedant was arrested for two outstanding city arrest warrants after a deputy was called to a home on a disorderly person complaint. The decedant told the deputy he had ingested methyl alcohol, refused to cooperate with the deputy's attempts to determine his physical condition and apparently refused to accept ambulance transportation to the hospital. The deputy transported the decedant to the city where a police officer assumed custody and transported the decedant to the city lock-up without a medical examination. At booking the decedant appeared to be intoxicated but no special precautions were taken; he was placed in handcuffs in a maximum security plexiglass-lined observation cell because he was belligerent and was believed to have previously attempted suicide. The decedant fell asleep (or passed out) on the floor and remained motionless for several hours; he was visually checked periodically by officers who observed no change in his condition. Nearly six hours after being placed in the cell officers observed mucous or vomit coming from the decedant's nose or mouth and when they rolled him over to remove the handcuffs his head jerked and struck the wall or floor causing a laceration above his eyebrow; he did not awaken. No medical attention was obtained for another two hours when he was transported to the hospital in a comatose condition, where he died shortly after arrival. The district court held that the sheriff and county were not liable under § 1983 for inadequate training nor were they liable for gross negligence based on allegedly inadequate training. The court also held that the sheriff and county were immune from liability for gross negligence, and that the city, police department and police chief were not deliberately indifferent to the need for better training. The court noted that such claims would apply only if the conduct represents usual or recurring situations with which the officers must deal. Deputies had completed training approved by the state law enforcement training council and had received substantial in-service training. According to the court, the fact that they were arguably negligent when they took the decedant into custody without first ascertaining his medical condition was not enough, in itself, to create a question of fact regarding the adequacy of their training. The lack of a county policy regarding treatment of persons who had ingested methyl alcohol was not significant absent evidence that methyl alcohol ingestion was a recurring problem of which staff were aware. The court ruled that the

action of one detention officer indicated only negligence, which was not sufficient to sustain liability under § 1983. The court ruled, however, that genuine issues of material fact precluded summary judgment for some, but not all, of the city police officers who failed to take any action in response to their observation that a blow to the head failed to rouse the intoxicated detainee. (Lansing Police Lock-Up, Michigan)

U.S. Appeals Court
RETALIATION

Ward v. Dyke, 58 F.3d 271 (6th Cir. 1995). A inmate sued prison officials alleging violation of his rights as the result of a transfer from one prison to another because he exercised his right to seek redress of grievances. The district court denied summary judgment for the defendants on the grounds of qualified immunity. The appeals court reversed, finding that the officials could permissibly transfer an inmate from a level II institution to another in order to give prison staff a respite from the inmate's continuous barrage of grievances, even if the new facility was less desirable than the facility from which the inmate was transferred. The court noted that the inmate had no constitutional right not to be transferred when prison officials determine, in exercise of their discretion, that the prisoner was an adjustment problem. (Ionia Temporary Facility and Chippewa Temporary Facility, Michigan)

U.S. District Court
WRONGFUL DEATH

Weinberger v. State of Wis., 906 F.Supp. 485 (W.D.Wis. 1995). The father of a murder victim brought a civil rights action against the state, a probation officer, and state employees, alleging that their mishandling of a probationer's supervision caused his son's death. The district court granted summary judgment for the defendants, finding that a suit against the state and the probation officer in her official capacity was barred and that the probation officer was immune from liability under state law. The court also ruled that the probation officer's actions did not deprive the victim or the father of their due process rights. The father had alleged that the probation officer was reckless in accepting an unreasonably heavy caseload, failing to make a home visit, and failing to recognize the probationer's worsening mental condition. The plaintiff's son was one of Jeffrey Dahmer's victims. (Wisconsin)

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
MEDICAL CARE

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

1996

U.S. District Court
PRISONER ON
PRISONER ASSAULT

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

U.S. District Court
OFFICER ON
PRISONER ASSAULT

Barber v. Grow, 929 F.Supp. 820 (E.D.Pa. 1996). A prison inmate filed a § 1983 action against a prison guard, alleging that he was injured when the guard pulled a chair from under him. The district court found that the inmate failed to state an Eighth Amendment claim and failed to state a claim under the Federal Tort Claims Act (FTCA). The court found that the Federal Prison Industries Act generally provides the exclusive remedy for injuries sustained by working prisoners, but it does not apply to injuries sustained as the result of intentional conduct. The court found that the guard's alleged conduct in pulling a chair out from under the inmate was not "wanton" and thus did not violate the Eighth Amendment; the inmate did not allege that this happened more than once, and alleged that his injury consisted only of some cuts and bruises to his arm and knee. (Federal Correctional Facility, Pennsylvania)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Byrd v. Abate, 945 F.Supp. 581 (S.D.N.Y. 1996). An inmate brought a § 1983 action against a correction officer, commissioner of correction and city mayor after he was injured during an incident at a city correctional facility. The district court denied summary judgment for the defendants, finding that the inmate had satisfied the objective element of his Eighth Amendment claim by demonstrating that he was blinded in his left eye when a fellow inmate stabbed him with an unknown instrument. The court found that a genuine issue of material fact remained concerning whether the correction officer acted with deliberate indifference to the inmate's safety when he left his assigned post to relieve another officer. The court held that the inmate's claim may rest on the assertion that the inmate faced an excessive risk of attack shared by other inmates in his situation, and that he need not show that he faced an excessive risk of attack for reasons unique to him. The court noted evidence presented established that the officer responsible for watching the inmate's area left his assigned post and relieved another officer without supervisory permission or proper relief, and that the inmate and others incarcerated in the area were receiving services from the facility's mental health center. (Anna M. Kross Correctional Facility, Rikers Island, New York City)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

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
PRISONER ON
PRISONER ASSAULT
SUPERVISION

Clark v. McMillin, 932 F.Supp. 789 (S.D.Miss. 1996). A wrongful death suit alleging state law and federal civil rights claims was brought against a sheriff, a county, and an unnamed defendant seeking damages for the death of a pretrial detainee who was assaulted and killed by his cellmate. The district court remanded the state law claims and dismissed the federal claims. The court found that the sheriff's policy of checking cells containing pretrial detainees on suicide watch every 15 minutes was not deliberate indifference, even though 15 minutes was more than enough time for one inmate to kill another. The court found that although the sheriff did have constructive knowledge of the perpetrator's violent propensities from county records, the sheriff did not have actual knowledge of a substantial risk of serious harm to the victim. The plaintiffs had alleged that the county had no policy to safeguard inmates from attacks from other inmates, that the sheriff failed to place the perpetrator in a unit for violent felons, that the county failed to properly screen inmates for violent propensities, and that the county failed or refused to provide adequate medical care to the victim after the assault. (Hinds County Detention Center, Mississippi)

U.S. Appeals Court
PROTECTION FROM
HARM

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

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Davis v. Scott, 94 F.3d 444 (8th Cir. 1996). An inmate who had served as a prison informant filed a § 1983 suit against prison officials alleging failure to protect him from an assault by another inmate. The district court granted summary judgment for the prison officials and the appeals court affirmed. The appeals court held that the officials did not violate their duty to take reasonable measures to protect the inmate when they returned him to the general population. The officials asserted that inmates on the plaintiff's "enemies list" were no longer being held at the facility, and that the plaintiff could not provide them with any names of inmates he feared might attack him. (Farmington Correctional Center, Missouri)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Delgado-Brunet v. Clark, 93 F.3d 339 (7th Cir. 1996). An inmate injured in a prison attack brought a Bivens action against prison officials alleging violation of his Eighth Amendment rights. The district court granted summary judgment motions for two defendants and dismissed the case against the third. The appeals court affirmed, finding that the manager of the controlled unit in which the inmate was housed was not liable for violating the inmate's Eighth Amendment rights given the inmate's failure to show that the manager

knew of a substantial risk of harm to the inmate. According to the court, the manager knew the inmate needed to be separated from certain inmates and took steps to do so, but nothing showed that the manager knew that the plaintiff's attacker was a member of a gang the inmate feared or that the inmate was in danger of attack. (United States Penitentiary, Marion, Illinois)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Dorsey v. St. Joseph Co. Jail Officials, 910 F.Supp. 1343 (N.D.Ind. 1996). A former pretrial detainee brought a civil rights action under § 1983 against county jail officials, alleging they failed to protect him, used excessive force, and failed to meet his medical needs. The court found that jail officials did not fail to protect the inmate from other prisoners, as all inmates could not be housed in single cell housing to ensure their safety. (St. Joseph Co. Jail, Indiana)

U.S. District Court
PROTECTION FROM
HARM

El Tabech v. Gunter, 922 F.Supp. 244 (D.Neb. 1996). Inmates sued corrections officials alleging that the practice of double celling inmates with random cell assignment violated the Eighth Amendment. The district court ordered remedial measures and the officials appealed; the appeals court remanded the case for certification of findings. On remand, the district court held that evidence was sufficient to find that prison officials actually knew of and disregarded the substantial risk to the safety of inmates posed by making random double cell assignments without the use of classification information and without determining inmate compatibility. The court noted that evidence supported the conclusion that the level of violence at the penitentiary, including violence in double cells, posed a substantial risk of harm to inmates. The court found that remedial measures, such as cell moves, protective custody, or posting staff on a gallery, did not render the decision not to use classification information reasonable. The court found that evidence established that wardens were personally responsible for the failure to use classification information before making cell assignments. (Nebraska State Penitentiary)

U.S. Appeals Court
SUICIDE

Estate of Cole by Pardue v. Fromm, 94 F.3d 254 (7th Cir. 1996). The estate and mother of a pretrial detainee who committed suicide in a psychiatric ward brought a civil rights action in state court against nurses and a psychiatrist who assisted in the detainee's treatment. After removal by the defendants to federal court the district court granted them summary judgment. The appeals court affirmed, finding that allegations of medical malpractice were not sufficient to sustain a § 1983 action. The court also held that the plaintiffs failed to demonstrate that the defendants were subjectively aware that the detainee would try to commit suicide. The court found that the plaintiffs failed to demonstrate deliberate indifference by the psychiatrist's classification of the detainee as a potential suicide risk rather than a high suicide risk. Although the defendants conceded that plastic bags such as the one the detainee used to asphyxiate himself posed a substantial risk to a patient intent on suicide, the court found that the fact that the detainee was placed on the lower of two levels of suicide precautions showed a subjective conclusion that the detainee did not intend to kill himself. The court noted that determining the point at which a detainee's right under the due process clause to be free from bodily restraint during psychiatric hospitalization intersects with the right to be restrained so he will not harm himself is a matter of medical judgment. (Marion County Jail and Wishard Memorial Psychiatric Ward, Indiana)

U.S. District Court
SUICIDE

Estate of Frank v. City of Beaver Dam, 921 F.Supp. 590 (E.D.Wis. 1996). The personal representative of the estate of a detainee who committed suicide in jail brought a § 1983 action against police officers who had contact with the detainee prior to his suicide. The district court found that the officers enjoyed qualified immunity and dismissed the case. The court noted that although one officer was told that the detainee had exhibited severe mood swings on his way to jail, the detainee did not make any threats, cause any disturbances, stagger, slur his speech or do anything bizarre which would have lead the officer to believe he was suicidal. The court also noted that the only contact a jail officer had with the detainee was while escorting him to his cell and the officer only observed that the detainee was quiet and did not respond to a question she asked him. According to the court, the detainee's behavior did not suggest that he was in imminent danger to himself since he answered questions directly and clearly, walked to his cell without problems, ate breakfast and engaged in a telephone conversation. (Dodge County Jail, Wisconsin)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Grimsley v. MacKay, 93 F.3d 676 (10th Cir. 1996). A prisoner brought a civil rights action against prison officers and administrators after his eye was injured by another prisoner during an altercation. The district court awarded damages to the prisoner but the appeals court reversed, finding that prison administrators who were not personally involved with the altercation could not be held liable for the prisoner's injuries, even though they had helped to develop training programs used at the prison in the years preceding the incident. The court also found that the prisoner was not incarcerated under conditions that posed a substantial risk of serious harm as required to establish an Eighth Amendment claim; the prisoner was securely locked by himself in a maximum security cell. (Utah State Prison)

U.S. Appeals Court
SUICIDE

Hare v. City of Corinth, MS, 74 F.3d 633 (5th Cir. 1996). The estate of a detainee who committed suicide while in custody brought a § 1983 action against a city and its officials. The district court denied the officials' motion for summary judgment on qualified immunity grounds and the officials appealed. The appeals court dismissed the appeal, but after rehearing the case

en banc the appeals court vacated and remanded, finding that an episodic act or omission of a jail official does not violate a pretrial detainee's due process right to medical care or protection from suicide unless the official acted or failed to act with subjective deliberate indifference. (City Jail, Corinth, Mississippi)

U.S. District Court
PRISONER SUICIDE

Hare v. City of Corinth, Miss., 949 F. Supp. 456 (N.D. Miss. 1996). The estate of a detainee who committed suicide brought a § 1983 action against a City of Corinth and police officers. The district court denied the police officers' motion for summary judgment on qualified immunity grounds and the appeals court dismissed the appeal. Hearing the case en banc, the court of appeals vacated and remanded. On remand, the district court denied the officers' motion for summary judgment, finding that genuine issues of material fact existed as to whether the officers had actual knowledge of an objectively substantial risk of harm to the detainee, and whether they responded to that risk with deliberate indifference. The court noted that law was clearly established in 1989 that the officers had a minimum duty to the detainee not to be subjectively aware of a substantial risk of harm to the detainee and then be deliberately indifferent to her serious medical needs. (City of Corinth, Mississippi)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Harrell v. Sheahan, 937 F.Supp. 754 (N.D.Ill. 1996). A prisoner brought a false imprisonment and § 1983 action against a county sheriff alleging violation of his due process and Eighth Amendment rights. The district court granted summary judgment to the sheriff, finding that the prisoner's erroneous detention did not violate the due process clause where state remedies were available. The prisoner had asserted that he was entitled to "day for day" good time credits under the terms of his sentence and that the sheriff failed to release him in a timely manner. The prisoner had alleged that the county prison policy of inadequately training its employees to interpret court orders resulted in their failure to award him good time credit. After the date that the prisoner asserted he was entitled to be released, he was attacked by other prisoners. The court found that the sheriff was not liable in his official capacity under the Eighth Amendment despite the prisoner's allegation that the county prison had a policy of providing inadequate patrols. The court found that the prisoner's allegation that the prison's policy of failing to separate gang members from non-gang members failed to state an Eighth Amendment claim absent evidence that the policy actually caused the prisoner's injury, or that the policy constituted deliberate indifference to an inmate's health or safety. The court also found that the sheriff was not liable in his official capacity for the prisoner's beating, despite the prisoner's allegation that the county prison had a policy of allowing a single guard to supervise two prison wings even when threats of gang and nongang violence were made. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
PROTECTION FROM
HARM

Jensen v. Clarke, 94 F.3d 1191 (8th Cir. 1996). State prison inmates brought a § 1983 action against prison officials alleging that randomly assigning new inmates to double cells substantially increased the risk of violence by cellmates. On remand from an appeal of a remedial plan, the district court ruled that prison officials had actual knowledge of and disregarded a substantial risk of safety to inmates posed by random cell assignments. The appeals court affirmed, finding that the practice was cruel and unusual punishment and noting that this suit was a failure-to-protect case focusing on the manner of assigning new inmates to cells, rather than a prison crowding case. The court found that cruel and unusual punishment was established by evidence that demonstrated the increased number of inmates found guilty of violent offenses, the number of inmates requesting protective custody, and anecdotal evidence of violence from prisoners. The appeals court held that prison officials were entitled to qualified immunity in their individual capacities in light of the diversity of precedent on the need for classifying cellmates. The appeals court found that a district court injunction which required prison officials to use available classification information to determine cellmate compatibility was a proper remedy, after officials chose to take a premature appeal rather than remedy the constitutional violation. (Nebraska State Penitentiary)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Jelinek v. Greer, 90 F.3d 242 (7th Cir. 1996). A prison inmate who was seriously injured after he was removed from protective custody filed a civil rights action against prison officials. The district court granted summary judgment to the prison officials and the appeals court affirmed, finding that moving the inmate from protective custody despite his fears of harm from gang members whom he turned in did not show that the prison officials knowingly disregarded a serious risk of harm to the inmate. The prison officials had assigned the inmate a space that was less protected than protective custody, but which was not in the general population. (Menard Correctional Center, Illinois)

U.S. District Court
SUICIDE ATTEMPT

Johnson v. Hill, 910 F.Supp. 218 (E.D.Pa. 1996). A county prisoner sued officials alleging violation of his rights with respect to housing and medical treatment. The district court dismissed the case, ruling that prisoner placement in housing is a matter of prison administration; the prisoner had claimed he was wrongfully placed in a cell block that housed people accused of murder and rape and people with high bail. The court also found that the inmate did not state a claim for an Eighth Amendment violation with respect to the officials' responses to his thoughts of suicide or to his injuries when he slit his wrists. The court found that the prisoner had not communicated a strong likelihood that he would inflict harm on himself, but rather that there as a mere possibility that harm would occur. Medical care

received for self-inflicted injuries to his wrist was adequate where a nurse examined his wrist daily for two weeks following the injury. (Delaware County Prison, Pennsylvania)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

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. Appeals Court
PRISONER ON STAFF
ASSAULT

Liebson v. New Mexico Corrections Dept., 73 F.3d 274 (10th Cir. 1996). A librarian who was assaulted by a prison inmate while she was working at a prison brought a civil rights action against prison officials. The librarian alleged that the officials, who had changed the hours during which a guard was in the library, failed to protect her. The district court denied the officials' motion for summary judgment and they appealed. The appeals court reversed the case and remanded it, ruling that prison officials were not liable under either the special relationship theory or the danger creation theory. The court found that even if the librarian alleged an actual due process claim, those rights were not so clearly established that reasonable officials would have understood that their conduct violated those rights at the time of the assault. The court also ruled that there was no special relationship between prison officials and the librarian which would trigger an affirmative duty on the part of the officials to protect the librarian from assault by inmates; the librarian's presence in the prison library, both before and after the guard was removed, was completely voluntary and she was free to come and go each day of her employment. (New Mexico State Penitentiary)

U.S. District Court
BRUTALITY
USE OF FORCE

Mathie v. Fries, 935 F.Supp. 1284 (E.D.N.Y. 1996). A former inmate of a county correctional facility brought an action against the facility's Director of Security alleging that the director sexually abused him while he was confined as a pretrial detainee. The district court entered judgment for the inmate, finding that evidence was sufficient to support findings that the director repeatedly sexually abused the inmate and that the director sodomized the inmate while he was handcuffed to pipes in the security office. The court found that these acts violated the inmate's due process rights and that the director was not qualifiedly immune from § 1983 claims, awarding compensatory damages of \$250,000 and punitive damages of \$500,000. The court noted that evidence showed that the inmate sustained physical injury to his anal area and suffered from post-traumatic stress disorder as a result of sexual abuse by the director. The court called the director's action an outrageous abuse of power and authority. (Suffolk County Correctional Facility, New York)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

Mitchell v. Maynard, F.3d 1433 (10th Cir. 1996). A prisoner brought a § 1983 action against prison officials, claiming violation of his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments. The district court granted judgment for the defendants as a matter of law and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded the case for further proceedings. The appeals court ruled that the prisoner failed to state a cause of action that the guards' beating of him violated his rights because he failed to name the guards responsible in the complaint and he did not allege any personal involvement of the warden and director of corrections. According to the prisoner, he tripped and fell to the ground where he was beaten by several guards with night sticks while they shouted racial epithets at him. The prisoner was naked and shackled at the wrists, ankle and belly at the time the attack occurred and there was no indication he had acted inappropriately or posed any disciplinary problem at the time of the beating. (Mack Alford Correctional Center, Oklahoma)

U.S. District Court
PRISONER SUICIDE

Robey v. Chester County, 946 F.Supp. 333 (E.D.Pa. 1996). The mother and the minor children of a pretrial detainee who committed suicide after being taken off of a suicide watch brought civil rights and state law claims against the county, its board of prison inspectors, two wardens, a prison counselor and a psychologist who treated the detainee. The

district court granted the defendants' motion for summary judgment in part and denied in part. The court ruled that the wardens' failure to institute disciplinary proceedings following the detainee's suicide did not constitute knowing acquiescence so as to preclude qualified immunity. The court also held that the prison counselor's failure to respond to requests to see the detainee was not a violation of clearly established rights so as to preclude qualified immunity, if the counselor had not known of the detainee's prior suicide attempt until after the detainee's death. However, the court ruled that reasonable jurors could find that the psychologist acted with deliberate indifference to the detainee's psychological needs so as to be liable under a § 1983 civil rights claim, precluding summary judgment. The psychologist knew when the detainee entered the prison of his prior suicide attempt and that the detainee was diagnosed upon entering the prison suffering from major depression as well as impaired insights and judgment. The psychologist apparently ordered the discontinuation of the suicide watch and failed to perform a promised follow-up check. The court found evidence supporting a punitive damage claim only against the psychologist and that the county and board of prison directors had sovereign immunity from state law claims. (Chester County Prison, Pennsylvania)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Smith v. Arkansas Dept. of Correction, 103 F.3d 637 (8th Cir. 1996). A district court granted injunctive relief in response to an inmate's claims of unconstitutionally dangerous prison conditions, and in response to another inmate's allegations that officials had failed to protect him from an attack by another prisoner. The court applied collateral estoppel in favor of a third inmate's estate. Prison officials' appeals were consolidated. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that it was within the district court's discretion to grant injunctive relief for insufficient supervision of an open barracks at a prison after the court concluded that the threat of harm to inmates from other prisoners violated the Eighth Amendment. Although one guard remained in the barracks hallway, the guard was prohibited from entering the barracks if an altercation was in progress. Two inmates were violently stabbed while asleep in their beds and evidence indicated that violence, robbery, rape, gambling and the use of weapons by inmates were prevalent in the open barracks. The court also determined that the solutions adopted by the district court to respond to overcrowding and supervision problems in a previous unrelated case could be used to measure the officials' conduct and knowledge when determining if the officials were entitled to qualified immunity. (Cummins Unit, Arkansas Department of Correction)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Webb v. Lawrence County, 950 F.Supp. 960 (D.S.D. 1996). A prisoner sued county correctional officials alleging civil rights violations under § 1983 and common-law negligence, seeking compensatory and punitive damages in connection with a sexual assault by another prisoner. The district court granted summary judgment for the defendants and dismissed the negligence and punitive damages claims. The court ruled that the incarceration of the plaintiff in the same cell as a prisoner who sexually assaulted him did not give rise to a cause of action against corrections officials under § 1983. The court found that the officials had no reason to be aware and were not in fact aware of an excessive risk to the plaintiff's health or safety, noting that the prisoner who committed the assault had assaulted no other prisoners while incarcerated nor had the plaintiff notified officials of his fear of his cellmate or of any assaults until he had been assaulted for four straight days. The court also found that under South Dakota law, the purchase of liability insurance by the county on behalf of prison officials did not waive the officials' statutory immunity from personal liability for negligence. (Lawrence County Jail, South Dakota)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

Wilson v. Williams, 83 F.3d 807 (7th Cir. 1996). A pretrial detainee brought a civil rights action against a correctional officer for use of allegedly excessive force. The district court granted summary judgment for the officer and an appeals court reversed the decision. On remand, the district court entered judgment on a jury verdict in favor of the officer and the detainee appealed. The appeals court reversed the district court decision. The appeals court found that a jury could properly consider objective factors in determining intent, particularly where the court listed a variety of factors that could be used to infer an intent to punish. The detainee alleged that the correctional officer attacked him without provocation, continued to beat him while he was restrained by other correctional officers, and attacked him again when he was restrained in a different area of the jail. The appeals court ruled that the jury instruction constituted an error. The jury was instructed to determine, through objective means, whether the prohibited punitive intent was present, but was then told even if this was found, a reasonable good faith punitive intent would excuse it. (Cook County Jail, Illinois)

1997

U.S. District Court
RIOT
STAFFING

Alley v. Angelone, 962 F.Supp. 827 (E.D.Va. 1997). Prisoners brought a civil rights action against corrections officials and the district court dismissed the case. The court found that the prisoners could not recover under the civil remedies section of the Racketeer Influenced and Corrupt Organizations Act (RICO) where they did not allege that they were injured in their business. The court held that the prisoners did not have a constitutional right to prison work assignments or a constitutionally protected interest in

continued prison employment. The prisoners also failed to state a § 1985 claim with their allegations that corrections officials engaged in a conspiracy to under-staff facilities and to incite riots. The court found that due process was not required before a prison lockdown, as lockdowns were within the normal range of incarceration. (Virginia Department of Corrections)

U.S. Appeals Court
WORK INJURY

Bagola v. Kindt, 131 F.3d 632 (7th Cir. 1997). A federal inmate whose arm was severed by a textile machine while he was working in a prison industry program brought a Bivens action against prison officials. The district court entered summary judgment for the prison officials and the appeals court affirmed. The appeals court held that the inmate could bring a Bivens claim separate from any claim under workers' compensation but that the officials' failure to protect the inmate did not rise to the level of deliberate indifference. According to the court, it is not the injury itself that gives rise to a Bivens claim for violating the Eighth Amendment, but rather the court must scrutinize whether prison officials acted, or failed to act, with a sufficiently culpable state of mind to determine if the injury was the result of punishment or a tragic accident. The court found that the officials' conduct did not rise to a level of deliberate indifference where evidence indicated that the officials believed that safety violations were abated, did not receive any additional safety citations until after the accident, and continued to attempt to abate any risks associated with the inherently dangerous industrial setting. The officials had required the inmate to attend frequent safety meetings and to sign a job safety analysis. The inmate was working as a "card fixer" in the prison factory's Card and Spin Department, which produced wool blankets. (Federal Prison Industries, U.S. Penitentiary in Terre Haute, Indiana)

U.S. Appeals Court
PRISONER SUICIDE

Barrie v. Grand County, Utah, 119 F.3d 862 (10th Cir. 1997). A detainee's heirs brought a civil rights action against a county and various individuals after the pretrial detainee committed suicide in a county jail. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the defendants' duty to the detainee was based on the deliberate indifference standard, not objective reasonableness, and that the defendants did not act with deliberate indifference. The detainee was placed in the jail's "drunk tank" after being booked, and a deputy noted that he had been drinking alcohol. The detainee was allowed to retain the clothes he was wearing at the time of his arrest, which included a pair of sweat pants containing a cloth cord to cinch the waist of the sweat pants. The detainee was checked about four hours after he was placed in the cell, and again about two hours later. An hour later the cell was checked and the detainee was found hanging from the 38-inch draw cord. (Grand County Jail, Utah)

U.S. District Court
OFFICER ON
PRISONER ASSAULT
SUICIDE ATTEMPT

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

U.S. Appeals Court
OFFICER ON PRI-
SONER ASSAULT

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
PRISONER ON
PRISONER ASSAULT
STAFFING
SUPERVISION

Earrey v. Chickasaw County, Miss., 965 F.Supp. 870 (N.D.Miss. 1997). An inmate detained in a county jail as the result of an alleged parole violation sued the county because he was beaten by other inmates while detained. The district court held that the detained parolee could not avail himself of Fourteenth Amendment claims, but could pursue a failure to protect claim under the Eighth Amendment. The court denied summary judgment for the county, finding it was precluded by genuine issues of material fact as to the existence of subjective knowledge of risk on the part of the jail and the sheriff. The parolee and most other persons housed at the jail were allowed to leave the jail during the day to work and returned in the evenings. According to jail policy, only one jailer was provided for the facility, and he was required to be present at the jail twenty-four hours a day, seven days a week. The jailer was only allowed to leave the jail when deputy sheriffs were present at the facility. Policy required the jailer to check on prisoners every hour during the day, but nighttime checks were not made. The jailer could monitor inmates electronically in two ways: an intercom and an emergency switch available to inmates. The parolee alleged he was severely beaten by other inmates, who prevented him from reaching the emergency switch. (Chickasaw County Jail, Okolona, Mississippi)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT
FAILURE TO PROTECT

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

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Heisler v. Kralik, 981 F.Supp. 830 (S.D.N.Y. 1997). A pretrial detainee sued a county, the county sheriff's department, the medical department of a correctional facility, and various individual correctional officers, alleging deliberate indifference to his safety and medical needs. The district court found that the detainee adequately stated a claim for municipal liability under § 1983, and that the existence of a substantial risk of serious harm to the detainee did not depend on the seriousness of the injuries actually received in an assault. The court noted that the detainee's constitutional right to be protected from a risk of harm from inmates was clearly established at the time he was assaulted. The detainee was charged with sexual assault of a minor and feared that he would be harmed by other prisoners when he was transferred to another jail. The detainee claimed that he witnessed a telephone call by a police detective to the receiving county's sheriff's department advising them that the detainee desired protective custody. The detainee said he was told that the sending sheriff contacted the receiving sheriff to advise him of the need for extra security. Six days after his transfer the detainee was assaulted by another inmate and suffered contusions and swelling. The detainee alleged that officers witnessed the actual assault but did nothing to stop it and that he was not given adequate pain medication following the assault. (Rockland County Correctional Center, New York)

U.S. District Court
PROTECTION FROM
HARM

Jackson v. Johnson, 962 F.Supp. 391 (S.D.N.Y. 1997). An inmate sought a temporary restraining order and an immediate transfer to a different facility alleging that he feared attacks from prison staff. The district court denied the inmate's request, finding that the inmate's subjective fears of individuals at his current prison did not demonstrate a sufficient factual basis of irreparable harm. The inmate alleged that inmates acting in concert with the prison staff attacked him in another prison, in retaliation for having asked to be placed in protective custody. The court found that even if the inmate had been attacked while in other prisons, there was no indication that he was hurt, or that he was in imminent danger of being hurt at his current prison. (Attica Correctional Facility, New York)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
THREATS

K.F.P. v. Dane County, 110 F.3d 516 (7th Cir. 1997). An inmate brought a § 1983 action against a county, a sheriff, and correctional facility employees after he was assaulted by another inmate. The district court granted summary judgment for the defendants and the inmate appealed. The appeals court affirmed, finding that the inmate failed to present evidence establishing the liability of the employees, sheriff or county. The inmate failed to isolate for the court which individuals knew of another inmate's threatening nature and disregarded the danger to the plaintiff inmate. The court found that the inmate failed to establish that the county had a policy of housing violent and nonviolent inmates together, or that any county official knew of a causal link between the alleged policy and harm to inmates. The inmate was serving a forty-six day sentence in a dormitory-like facility used to house inmates with work release privileges. About a week into his sentence, the inmate was sexually assaulted by another inmate, and a week later the same inmate threatened to assault the plaintiff inmate again. (Dane County Ferris Center, Wisconsin)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Killingsworth v. Ondahl, 978 F.Supp. 1425 (D.Kan. 1997). An inmate brought a Bivens action alleging that prison officials were deliberately indifferent to his safety by placing him in a holding cell with a prisoner who had previously assaulted him. The district court granted summary judgment in favor of the officials, finding that the record did not show that the officials had information suggesting that the prisoner presented a threat to the inmate's safety. According to the court, it did not appear that the inmate notified officials of his belief that they should be separated, and the inmate did not allege that the prisoner made any effort to harm him while they were celled together. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Lancaster v. Monroe County, Ala., 116 F.3d 1419 (11th Cir. 1997). The administrator of the estate of a pretrial detainee who died due to an injury sustained while in custody at a county jail brought an action against the county, county commission, sheriff and jailers alleging constitutional violations. The district court granted summary judgment for the defendants and the plaintiff appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the sheriff and jailers were not entitled to qualified immunity on the claim of deliberate indifference, but that the jailers were state officials and were thus immune under the Eleventh Amendment from suit in their official capacities. The appeals court held that the sheriff and jailers were immune under the doctrine of sovereign immunity from state law claims brought against them in their individual capacities.

The detainee was a chronic alcoholic who, according to the court, died in custody because the sheriff and jailers delayed treatment despite their knowledge of his urgent medical condition. The court found that the sheriff's and jailers' conduct amounted to deliberate indifference under clearly established law at that time. The detainee was tested upon his admission to the jail, where he registered blood alcohol contents of .324 and .323. He was placed in the holding cell, or the "drunk tank" as it was called, which was the normal practice for DUI detainees. Relatives of the detainee informed jail officers and the sheriff that the detainee was a chronic alcoholic who had been in the hospital recently with grand mal seizures. The relatives repeatedly attempted to secure treatment for the detainee, or to have him released to them so that they could secure treatment. The detainees cellmates reported that no jail officers or officials made any cell checks for several hours during the night. The following morning the detainee was shaking, and he fell when he attempted to sit up. He fell backwards out of his upper bunk and landed on his back on the floor where his head struck the floor and he began bleeding from the mouth. According to the cellmates, it took at least ten minutes for anyone to arrive at the cell after they called for help. When an officer did arrive, she did not enter the cell to provide assistance because of a jail policy that prevented a jailer from entering a cell without a deputy being present. More than 30 minutes after he fell from his bunk, the detainee was transported to the hospital by ambulance, where he later died from an intracranial hemorrhage. (Monroe County Jail, Alabama)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT
PLRA-Prison Litigation
Reform Act

Luong v. Hatt, 979 F.Supp. 481 (N.D.Tex. 1997). A state prisoner who was being housed in a privately-operated prison facility brought a pro se action against prison officials seeking transfer to another facility and damages for their failure to protect him from assaults by other inmates. The district court dismissed the case, finding that the prisoner did not demonstrate violations of his rights sufficient to support an order from the court requiring his transfer to another institution. The court also held that the prisoner could not recover damages in the absence of any indication that suffered a "physical injury" within the meaning of the Prison Litigation Reform Act (PLRA). According to the court, the cuts, scratches, bruises and similar injuries suffered by the prisoner lasted only two or three days and did not constitute the requisite level of physical injury. The court concluded that the appropriate de minimis standard is whether the injury is of a nature that would require a free-world person to visit an emergency room or to be attended by a doctor; injuries treatable at home with over-the-counter drugs, heating pads, rest and similar methods do not fall within the parameters of the PLRA requirements for a "physical injury." (Dickens County Correctional Center, Texas, operated by the Bobby Ross Group, Inc.)

U.S. Appeals Court
SEXUAL ASSAULT
PRISONER ON PRISONER ASSAULT

Luttrell v. Nickel, 129 F.3d 933 (7th Cir. 1997). A state prisoner brought a § 1983 action against a prison official alleging that the official's failure to protect him or transfer him from the cell of a psychologically disturbed inmate violated the Eighth Amendment. The district court granted summary judgment for the official and the appeals court affirmed, finding that the official was not deliberately indifferent to the risk that the prisoner might be harmed by his cellmate. According to the court, the official did not have a ministerial duty to transfer the prisoner to a new cell on the grounds that the prisoner's cellmate was psychologically disturbed where the official had no reason to believe that the cellmate was particularly dangerous if he was taking his medication. The prisoner had complained about his cellmate's "mental behavior" and requested a new cellmate. After his request was denied he awoke several days later to find his cellmate sexually assaulting him. (Dodge Correctional Institution, Wisconsin)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Martinez v. Mathis, 970 F.Supp. 1047 (S.D.Ga. 1997). An arrestee who alleged he was physically assaulted because a jailer encouraged other inmates to beat him brought a § 1983 claim against the jailer. The district court held that the arrestee established a Fourteenth Amendment claim, but that the jailer was entitled to qualified immunity because it was not clearly established that prison officials violate the constitution when they make statements in the presence of inmates that a particular inmate is "sick" and "should have his ass beat." The arrestee was suspected of molesting a child and he was placed in a cell with other inmates. (Jeff Davis County Jail, Georgia)

U.S. Appeals Court
PRISONER SUICIDE

Mathis v. Fairman, 120 F.3d 88 (7th Cir. 1997). A detainee's mother brought a civil rights action against jail personnel following the detainee's suicide while in custody. The district court entered summary judgment for the personnel and the mother appealed. The appeals court affirmed, finding that personnel did not exhibit deliberate indifference to the threat of suicide. The court noted that jail staff were concerned enough about the detainee's strange behavior to have a paramedic speak with him, to have him evaluated psychologically, and in deference to his fear that someone was trying to kill him, to place him in a single cell. After a mental health specialist concluded that the detainee did not pose a threat to himself, he was returned to the general jail population. The mother had alleged that the jail failed to adequately staff the facility and to adequately train its employees. A newly-hired officer was responsible for supervising the 25 inmates on the non-aggressive protective custody tier on which the detainee was housed. The officer, on his first day on the job, initially noticed the detainee's strange behavior and alleges that he reported it to his supervisor. The officer was hired less than a week earlier, and had just completed a four or five-day orientation. The appeals court noted that while cadets like the officer may not have been trained in suicide prevention, the jail maintained a psychiatric unit for that purpose. (Cook County Department of Corrections, Illinois)

U.S. District Court
PRISONER SUICIDE

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

U.S. District Court
PRISONER ON PRISONER ASSAULT

Morgan v. Arizona Dept. of Corrections, 976 F.Supp. 892 (D.Ariz. 1997). An inmate brought a § 1983 action against corrections officials stemming from an alleged assault by fellow inmates. The district court dismissed the action, finding that the inmate's failure to file an initial grievance under the corrections department's procedures deprived the court of jurisdiction because he failed to exhaust his administrative remedies. According to the court, the Prison Litigation Reform Act (PLRA) has made exhaustion provisions mandatory rather than directory, and courts no longer possess the discretion in the absence of exhaustion. The inmate had asked for a thirty day continuance to amend his complaint to prove he had exhausted his administrative remedies. (Arizona State Prison Complex, Winslow, Arizona)

U.S. District Court
WRONGFUL DEATH

Morris v. City of Alvin, Tex., 950 F. Supp. 804 (S.D.Tex. 1997). The representative of the estate of an arrestee who died in jail from a drug overdose brought a § 1983 action against the city. The district court dismissed the case, finding that allegations were insufficient to establish the existence of a municipal policy with regard to detainees who exhibited possible signs of a drug overdose. The court found that as a matter of law, the city's policies neither deprived the arrestee of adequate medical assistance nor violated the Fourteenth Amendment's required level of care. The court noted that the arrestee had already taken the overdose at the time of her arrest, and that the city was not constitutionally required to train jailers to recognize the ambiguous signs of a drug overdose. According to the court, the city had provided prompt medical care on two occasions during the arrestee's brief one-day stay at the jail, and the arrestee was immediately transferred to a hospital when she exhibited physical symptoms of a serious medical problem. (Alvin City Jail, Texas)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

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

U.S. District Court
PRISONER ON PRISONER ASSAULT

Payne v. Collins, 986 F.Supp. 1036 (E.D.Tex. 1997). The estate of a prison inmate who suffered fatal injuries in a prison fight filed a § 1983 action against four correctional officers. The district court granted summary judgment in favor of three officers, but denied it for the fourth officer. The court held that a factual issue existed as to whether the fourth officer had seen the fight occurring but failed to take steps to protect the inmate. (Terrell Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

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

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

U.S. District Court
PRISONER ON PRISONER ASSAULT

Rider v. Louw, 957 F.Supp. 983 (E.D.Mich. 1997). An inmate who was assaulted by another inmate brought a § 1983 action against a prison guard alleging that the guard's failure to prevent the assault violated his Eighth Amendment rights. The district court denied summary judgment for the guard, finding that genuine issues of material fact existed as to whether the guard was aware of the pending attack before it occurred, and whether the alleged knowledge of the attack amounted to knowledge of a "substantial risk" of serious injury to the inmate. (Macomb County Jail, Michigan)

U.S. Appeals Court
STAFFING OFFICER ON PRISONER ASSAULT

Scott v. Moore, 114 F.3d 51 (5th Cir. 1997). A pretrial detainee who alleged she was sexually assaulted by a correctional officer brought a § 1983 action against a city and its police chief. The district court entered summary judgment for the defendants, but the appeals court remanded the case on the claim of inadequate staffing. On remand, the district court again entered summary judgment for the defendants and the detainee appealed. The appeals court vacated and remanded. On rehearing en banc, the court of appeals affirmed, holding that the detainee met the burden of establishing a constitutional violation but that the city's failure to adopt a policy of adding jail staff did not constitute deliberate indifference.

According to the majority of the appeals court, there was no showing that the city had actual knowledge that its staffing policy created a substantial risk of harm to female detainees. As a condition of employment, jailers underwent background investigations, medical examinations and polygraph tests, none of which revealed any concerns about the jailer who allegedly sexually assaulted the detainee. The majority noted that the jailer had been a commissioned police officer for four years prior to his employment with the jail, without incident, and that he had been trained in the official policies of jail management by experienced jailers. The detainee had been arrested for public intoxication, assault and resisting arrest, and was taken to a city jail, processed by a female jailer who was on duty at the time, and placed in a holding cell pending arraignment. A male jailer subsequently replaced the female officer, entered the detainee's cell, and sexually assaulted her repeatedly during the course of his eight-hour shift. The jailer resigned and pleaded guilty to criminal charges. The majority of the appeals court rejected the detainee's argument that constitutionally adequate staffing would have included, at a minimum, a female jail officer, or at least two male officers, whenever a female pretrial detainee is in custody. The majority noted that the jail is located on the first floor of the police department, in the patrol division area, and a patrol duty sergeant periodically checks on jail personnel. However, four appeals judges dissented, suggesting that the city's policy of inadequate staffing enabled the harm to be committed and actually facilitated the sexual assault. While the majority asserted that the assault was episodic--by definition incidental or occasional, rather than regular and systematic. The minority argued that the long established custom of inadequate staffing was far from episodic, and that the city only offered financial justifications for its staffing policy. In the dissenting opinion, the judges stated they were unwilling to "classify the issues in this case as 'minutia.'" (City of Killeen Police Department, Texas)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT
BRUTALITY

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

U.S. Appeals Court
PRISONER ON
STAFF ASSAULT

Wallace v. Adkins, 115 F.3d 427 (7th Cir. 1997). A state prison officer sued prison officials under § 1983, alleging they failed to protect him. The district court granted summary judgment to the officials and the officer appealed. The district court affirmed, finding that prison guards who are ordered to stay at their posts are not in the kind of custodial setting required to create a special relationship based on an alleged affirmative duty of the state to ensure the safety of its employees for the purposes of the Fourteenth Amendment. The court also held that the officer failed to show that the officials affirmatively placed him in a position of danger that he would not have otherwise faced for the purposes of a due process claim. The court began its decision by stating "...the job of a prison guard is not an easy one, as this case illustrates." The officer was assigned to duty in a cell-house where a particularly violent inmate was housed. The inmate had specifically threatened to kill the officer several years earlier. The inmate attacked the officer, stabbing him 13 times. The officer claimed that prison officials failed to take preventive measures that would have protected him. The court concluded there was no doubt that the officer was in danger from the inmate on the morning of the attack and that officials knew of the danger but, according to the court "these are the risks of the guard's job." (Indiana State Prison)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Watson v. McGinnis, 964 F.Supp. 127 (S.D.N.Y. 1997). An inmate whose throat was slashed by another inmate brought a § 1983 action against corrections employees and officials. The district court held that the inmate's allegation that a guard intentionally called him a snitch in order to cause him harm by other inmates stated an Eighth Amendment claim. (Downstate Correctional Facility, New York)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Woods v. Lecureux, 110 F.3d 1215 (6th Cir. 1997). A murdered inmate's mother brought a § 1983 action against prison officials alleging violation of the inmate's Eighth Amendment rights. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion by excluding from evidence all materials from ongoing litigation challenging prison conditions in Michigan, or by prohibiting an expert witness from using the term "deliberately indifferent" to describe the defendants' conduct. According to the court, the use of the term

"deliberately indifferent" by the expert attempted to tell the jury what result to reach and ran the risk of interfering with jury instructions. The court held that the issue of whether an official acted with deliberate indifference depended on that official's state of mind, of which the expert witness had no knowledge. However, the appeals court held that genuine issues of material fact precluded summary judgment for a deputy warden but that there was insufficient evidence to support the imposition of liability against the deputy warden. (State Prison of Southern Michigan)

1998

U.S. District Court
OFFICER ON PRISONER ASSAULT

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

U.S. District Court
OFFICER ON PRISONER ASSAULT

Benglen v. Zavaras, 7 F.Supp.2d 1171 (D.Colo. 1998). A prisoner brought a § 1983 action against Colorado corrections officials and employees for alleged attacks on him by a guard and other prisoners following his transfer from Colorado to a Texas prison. The district court dismissed the case, finding that the prisoner failed to state claims against the Colorado corrections director, absent allegations that the director participated in the attack by the guard or that he ever had contact with the guard. The prisoner complained that he was attacked by a law enforcement official of the Texas county in which he was housed, alleging that the officer struck him with a rifle butt to the groin. The prisoner also alleged that several days later he was "brutally attacked without provocation and beaten" by three inmates in an attack that was observed by other law enforcement officers who did nothing to render aid. The prisoner underwent emergency surgery and sustained 70% loss of vision in one eye. (Bowie County Correctional Facility, Texas)

U.S. Appeals Court
OFFICER ON PRISONER ASSAULT

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
OFFICER ON PRISONER ASSAULT

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. District Court
PRISONER ON PRISONER ASSAULT

Boyce v. Fairman, 24 F.Supp.2d 880 (N.D.Ill. 1998). An inmate who was attacked by other inmates sued county corrections officials alleging that they failed to protect him and failed to provide adequate medical care. The district court held that the

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

U.S. District Court
PRISONER ON PRISONER ASSAULT

Bullock v. Barham, 23 F.Supp.2d 883 (N.D.Ill. 1998). A prisoner sued prison officials under § 1983 seeking to enjoin his transfer from protective custody to the general population, alleging the officials had previously failed to protect him from inmates who had threatened his life. The district court held that the prisoner's claim for injunctive relief to enjoin his transfer was cognizable, even though he was currently in protective custody, because the prison officials had previously failed to protect him from inmates and had transferred him back to the general population several times. The court denied the prisoner's claim for damages because the prisoner did not allege any physical injury. The prisoner had been a member of the Black Gangster street gang and alleged that the gang had placed a "hit" on him in retaliation for leaving the gang. (Joliet Correctional Center, Illinois)

U.S. Appeals Court
SUICIDE

Collignon v. Milwaukee County, 163 F.3d 982 (7th Cir. 1998). An arrestee's parents and estate sued county and village officials after the arrestee, who had a mental illness and some criminal history, committed suicide after he was released on bail. The district court granted judgment on pleadings for the village and granted summary judgment for the county defendants. The appeals court affirmed, finding that the treatment of the arrestee by a county psychiatrist while he was in pretrial detention did not violate substantive due process. The court also found that neither the police officers' failure to commence emergency detention proceedings, nor their return of the arrestee to his parents, amounted to a substantive due process violation. The court held that due process was not violated by the alleged refusal of a police officer to provide the arrestee with access to medical personnel capable of assessing the arrestee's condition. The appeals court held that the treatment of the arrestee by a county psychiatrist did not violate the arrestee's substantive due process rights because the psychiatrist exercised professional judgment in the face of the known serious medical needs of the arrestee. The psychiatrist, who was principally responsible for deciding the course of the arrestee's treatment at the jail, prescribed a nontherapeutic dosage of an antipsychotic drug with the intention of forming a "therapeutic alliance" with the arrestee, planning to slowly increase the dosage so that the arrestee could gradually overcome his aversion to side effects. The arrestee was able to lead a productive life while on his prescribed medication to treat his schizophrenia, but he stopped taking his medication and was arrested for damaging property and placed in a county jail for 17 days. He was released on bail to his parents, and shortly thereafter was temporarily detained by village police officers, who also released him to his parents. The next day he committed suicide. (Shorewood Police Department and Milwaukee County, Wisconsin)

U.S. Appeals Court
PROTECTION FROM HARM

Davis v. Brady, 143 F.3d 1021 (6th Cir. 1998). An arrestee brought a § 1983 action against police officers who allegedly left him in an inebriated condition on a dark, unfamiliar highway where he was subsequently hit by an automobile. The district court denied summary judgment for the officers and the appeals court affirmed and remanded. The appeals court held that the officers had a duty to not place the arrestee in danger once he had been in custody, and that the arrestee's right not to be abandoned by police was clearly established at the time of this incident. According to the court, once the police officers took the affirmative act of restraining the arrestee's freedom to act on his own behalf by taking him into custody, the officers imposed on themselves the duty to ensure that they were not placing the arrestee in danger, and that duty existed even after the arrestee was released from custody. The arrestee had been arrested for intoxication and disorderly conduct and was taken to a police station and subsequently transferred to a county jail, but the jail was full. The desk sergeant instructed the officers to release the arrestee "at the county jail if he was not so drunk that he would be a hazard to himself." The officers then drove the arrestee to a road just outside the city limits and released him in an area with a 55-mile-per-hour speed limit with few street lights and no sidewalks. The officers alleged that the arrestee requested this release site but the arrestee denied this.

About seven minutes after he was released by the officers, the arrestee was struck by a car, sustaining serious permanent injuries, resulting in the amputation of one of his legs. (Flint Police Department, Michigan)

U.S. Appeals Court
PRISONER IN PRISONER ASSAULT

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 roughhousing 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 held that there was sufficient evidence that county policies regarding the housing of juveniles, resulting in overcrowding, caused violations of the juvenile's constitutional rights to support the imposition of liability. The sheriff had acknowledged the dangers of housing five juveniles together in a 200-square-foot holding cell for months at a time. The appeals court found that a jury verdict that found that the sheriff was not liable in his official capacity did not exonerate the county by implication. The court suggested that the jury might have had a mistaken belief that the sheriff was a defendant in his individual capacity, and did not find that the county should "reap any benefit" from this inconsistency. 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
PRISONER ON PRISONER ASSAULT

Dowling v. Hannigan, 995 F.Supp. 1188 (D.Kan. 1998). A prisoner brought a pro se civil rights action alleging violation of his constitutional right to be protected from attacks by fellow prisoners. The district court denied summary judgment for the defendants, finding that it was precluded by fact questions as to whether prison officials satisfied their duty to protect the prisoner. A correctional officer had received an unsigned note stating that one prisoner was going to attempt to kill or injure the plaintiff because he had informed authorities about a drug transaction. Prison officials did not inform the plaintiff about the note, and he was attacked with a weapon fashioned from a razor blade and a toothbrush handle, sustaining injuries to his face and throat. The court found that there were fact issues, precluding summary judgment, regarding the adequacy of the prison's response. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
SUICIDE

Ellis v. Washington County, Tenn., 80 F.Supp.2d 791 (E.D.Tenn. 1998). The mother and the minor child of a pretrial detainee who committed suicide while confined brought a § 1983 wrongful death action against a city, county and jail officers. The district court granted summary judgment in favor of all but one of the defendants, finding that they were not liable for failing to take special precautions and to screen the detainee for suicidal tendencies in violation of his constitutional rights because the detainee did not exhibit a strong likelihood that he would attempt to take his own life. But the court denied summary judgment for a jail officer who allegedly failed to make other officers aware that he had seen the detainee initiate his hanging until ten minutes later. (Washington County Jail, Tennessee)

U.S. District Court
USE OF FORCE

Farabee v. Rider, 995 F.Supp. 1398 (M.D.Fla. 1998). An arrestee sued a county sheriff and deputies alleging negligence and malicious prosecution. The district court found that the sheriff owed a duty to protect the arrestee from the risk of use of excessive force created by his alleged failure to train and supervise deputies. The court held that the sheriff was not entitled to qualified immunity. The arrestee was pushed to the ground and handcuffed while a deputy put his knee in her back. She was transported to the county jail where she was incarcerated for at least 12 hours and she was suffering from back and arm injuries inflicted by the deputy while confined. (Glades County Jail, Florida)

U.S. District Court
PRISONER ON PRISONER ASSAULT SEPARATION

Faulcon v. City of Philadelphia, 18 F.Supp.2d 537 (E.D.Pa. 1998). A pretrial detainee who had been stabbed by another inmate sued city officials and correction officers alleging failure to protect, failure to supervise and failure to train under the Eighth Amendment. The district court granted summary judgment to the defendants, finding that the facility's policy of keeping pretrial detainees in the same housing unit as convicted inmates did not constitute deliberate indifference to a substantial risk of harm. The court also held that the lack of guidelines or training procedures regarding segregation of convicted inmates was insufficient to support claims for failure to supervise or failure to train. According to the court, a state statutory provision that indicated that sentenced prisoners should be housed separately from detainees was merely a recommended guideline rather than a mandatory requirement. (Philadelphia Industrial Correctional Center, PA)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Freeman v. Godinez, 996 F.Supp. 822 (N.D.Ill. 1998). A prisoner sued prison officials under § 1983 as the result of an attack on him by fellow prisoners. The district court denied summary judgment for the officials, finding that the inmate stated a claim arising from the attack. The court held that the prisoner was not required to exhaust his administrative remedies before filing the § 1983 action, where the prison grievance procedure could not have compensated the prisoner for his injuries once they occurred. The prisoner alleged that prison officials knew he was on a "hit list" and interrogated him about gang activities, which may have put him in danger. He requested and was denied protection twice. He was later attacked by three prisoners and stabbed in his back, chest and face, and beaten with pipes. (Western Illinois Correctional Center)

U.S. District Court
OFFICER ON PRI-
SONER ASSAULT

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

U.S. District Court
THREATS
PRISONER ON PRI-
SONER ASSAULT

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 Correctional Institution at Frackville, Pennsylvania)

U.S. District Court
SUICIDE

Greffey v. State of Ala. Dept. of Corrections, 996 F.Supp. 1368 (N.D.Ala. 1998). The administrator of the estate of a prisoner who had committed suicide sued corrections officials in state court. The case was removed to the federal district court, which held that supervisors who were not aware of the prisoner's earlier unsuccessful suicide attempt were not deliberately indifferent to his serious medical needs. The court also found that a classification specialist who did know of the earlier attempt was not deliberately indifferent because he had fulfilled his duties to the prisoner by referring him to a staff psychologist. The court did not hold the psychologist liable, finding that while his diagnosis eventually proved inaccurate, his conduct rose at most to the level of negligence. The court noted that prisons, even the best ones, breed despondency and it is not unusual for prisoners to display signs of depression. Only those prisoners who presented a strong likelihood, rather than a mere possibility, of suicide are entitled to protection from self-destruction. (Kilby Correctional Facility, Alabama)

U.S. District Court
OFFICER ON PRI-
SONER ASSAULT

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

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Jackson v. Everett, 140 F.3d 1149 (8th Cir. 1998). An inmate brought a civil rights action against prison officials alleging that his Eighth Amendment rights were violated when he was stabbed by his cellmate. The district court denied summary judgment for the officials but the appeals court reversed and remanded. The appeals court held that evidence was insufficient to establish that the officer knew of an excessive risk to the inmate's safety or that the officer acted recklessly with disregard to a known risk. An anonymous note was delivered to a prison officer, indicating that a cellmate planned to stab the plaintiff while he slept. The inmate was stabbed the next day in the prison cafeteria. The officer had investigated the note with both the inmate and the cellmate, both of whom denied there were any problems. (Cummins Unit, Arkansas Department of Corrections)

U.S. District Court
RIOT

Jackson v. U.S., 24 F.Supp.2d 823 (W.D.Tenn. 1998). A former inmate brought an action under the Federal Tort Claims Act (FTCA) seeking damages for injuries he suffered in a prison riot. The district court found that the statute of limitations barred the

inmate's Eighth Amendment claims. The court denied summary judgment for the defendants, finding it was precluded by genuine issues of material fact regarding the reasonableness of the actions of prison employees in treating the inmate and in locking down inmates during a fire. The inmate suffered a collapsed lung in a fire in housing units that were burning out of control during a prison riot. Prison officials locked down inmates in the housing units, and the court ordered further inquiry into whether delays were caused by negligence on the part of staff. The inmate alleged that a prison officer gave keys to another prisoner to release him during the fire, but he was never released and subsequently inhaled carbon monoxide and suffered a collapsed lung. The court also allowed further proceedings to determine if a federal prison physician exercised a reasonable degree of skill, possessed by others in the medical profession, in treatment the inmate, who was brought to the prison's front gate for evacuation to a local hospital. (Federal Correctional Institution, Memphis, Tennessee)

U.S. Appeals Court
PRISONER SUICIDE

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 be held liable on a § 1983 claim of failure to supervise, based on the on-the-job training received by the jailer, the county's failure to test the jailer on his knowledge of a manual outlining suicide prevention policies, and the county's decision to leave the jailer in charge. The appeals court found that this did not rise to the level of deliberate indifference. The court also found that the county was not liable for failing to train jailers on the risks of inmate suicides, when the county had in place policies intended to prevent suicides and no suicides had occurred at the jail before the detainee's. The court found that failing to lead the jailer, step by step, through policies in the manual did not amount to failure to train. The detainee had been arrested and taken to the jail and was intoxicated at the time of his admission. The admitting jail officer classified the detainee as a "suicide risk" because he admitted to previously attempting suicide and was on both clonazepam and valium. The officer checked on the detainee at intervals ranging from 7 minutes to 21 minutes, but did not turn on the audio system in the holding cell. The detainee used his long-sleeved shirt to hang himself on a metal-framed electrical conduit in the cell. The jailer was the only staff member on duty at the time. Before being assigned to work by himself he was given on-the-job training for 2½ weeks. The jailer was scheduled to attend a jailer training course but it was not offered for another month. At the time of the suicide the jailer had worked full-time for approximately two months. (Fall River County Jail, South Dakota)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Mabine v. Vaughn, 25 F.Supp.2d 587 (E.D.Pa. 1998). An inmate brought a § 1983 action against three prison officials alleging that they failed to protect him from other inmates. The district court granted summary judgment in favor of the defendants, finding that the fact that the inmate's attacker was inadvertently released into the general prison population did not violate the Eighth Amendment. The court also found no violation in the fact that prison officials failed to keep the inmate separate from another inmate who was the victim's brother. (State Correctional Institution at Graterford, Pennsylvania)

U.S. District Court
OFFICER ON PRI-
SONER ASSAULT

Mahotep v. DeLuca, 3 F.Supp.2d 385 (W.D.N.Y 1998). A prison inmate sued prison officials under § 1983. The district court held that the inmate presented fact issues with regard to allegations of physical assault by officers. The inmate claimed that as a result of an assault by officers he suffered a ruptured testicle, groin damage, severe pain, a pinched nerve in his ankle, and had a severe asthmatic attack that necessitated a long hospital stay. (Attica Correctional Facility, New York)

U.S. District Court
OFFICER ON PRI-
SONER ASSAULT

Moore v. Smith, 18 F.Supp.2d 1360 (N.D.Ga. 1998). An inmate brought a civil rights action against a corrections officer and commissioner of corrections, seeking the removal of the officer from his position and monetary damages for an alleged assault. The district court dismissed the case for failing to exhaust administrative remedies, finding that the case involved "prison conditions" and therefore exhaustion was required. The court held that under the provisions of the Prison Litigation Reform Act (PLRA), exhaustion was required where the inmate sought monetary damages, even though such damages are not available under prison grievance procedures. The inmate alleged that the officer grabbed his fan and hit him in the face and head. (Hays Correction Institution, Georgia)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Morstad v. Dept. of Corrections & Rehab., 147 F.3d 741 (8th Cir. 1998). A former inmate convicted of gross sexual imposition against his daughter brought an action against state officials and prison officials alleging violation of § 1983 in connection with an assault by a fellow inmate. The district court ruled in favor of the defendants and the appeals court affirmed. The appeals court held that the alleged failure of a psychologist to find an outpatient

sexual offender treatment program for the inmate that would not require the inmate to admit culpability for the sexual assault of his daughter, causing the inmate to be confined for treatment in the prison, did not support a § 1983 action against the psychologist in his individual capacity. According to the court, the psychologist's evaluation did not proximately cause the fellow inmate's assault, as required to support a negligence claim. As a result of the decision to treat the inmate in confinement, he was held at a state prison where he was housed with another inmate who had a history of violent behavior. The cellmate attacked the inmate with a baseball bat, causing permanent brain damage. (North Dakota State Penitentiary)

U.S. District Court
JUVENILE
SUICIDE

Mroz v. City of Tonawanda, 999 F.Supp. 436 (W.D.N.Y. 1998). The administrator of the estate of a minor who committed suicide after release from custody brought a state court action asserting state and § 1983 claims. The case was removed to federal court, which granted summary judgment in favor of the defendants. The court held that the minor, who had been released by police and taken home, was not owed a duty of protection under the due process clause because the minor was no longer in custody. The minor committed suicide shortly after he was driven home by police. He had been held in a booking room at the police headquarters after being arrested. The court found that the officers did not have actual knowledge that the minor posed a risk of suicide; although the minor was crying and distraught while in custody, the police did not overhear any suicide threats. The court found that probable cause existed for the arrest of the minor and that any force used was reasonable. (City of Tonawanda Police Dept., New York)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

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

U.S. District Court
PRISONER SUICIDE

Owens v. City of Philadelphia, 6 F.Supp.2d 373 (E.D.Pa. 1998). The administratrix of a pretrial detainee's estate and his surviving children brought a § 1983 action against prison guards and officials and the City of Philadelphia to recover for the detainee's suicide. The district court found that fact questions precluded summary judgment in favor of the guards on questions of qualified immunity, deliberate indifference and the adequacy of the City's training program. According to the court, the detainee's statement to a guard that he felt "schizy" and that he was "going to hurt myself" raised questions of fact on issues of knowledge and deliberate indifference. According to the court, it was not necessary to show that a guard believed that harm would actually befall the detainee; rather, the detainee's children only needed to show that the official acted or failed to act despite his knowledge of a substantial risk of serious harm. The guard called a psychiatrist knowing she intended to issue a pass for the detainee to go to the psychiatric unit but failed to note in the prison log the detainee's statement about hurting himself in order to inform the incoming officers and his superiors. There was nothing in the record that indicates that the pass was ever issued. The court also found that the officials' alleged conduct as policy-makers with respect to inadequate training to prevent suicide by pretrial detainees was actionable under § 1983 in a suit against them as individuals. The court held that whether the jail guards acted with objective reasonableness after they learned that the pretrial detainee was hanging in his cell involved questions of fact, precluding summary judgment. (Philadelphia Detention Center, Pennsylvania)

U.S. Appeals Court
PRISONER SUICIDE

Payne for Hicks v. Churchich, 161 F.3d 1030 (7th Cir. 1998). The children and estate of an arrestee who committed suicide in a city jail brought a state court action and a § 1983 action asserting wrongful death and survival claims. The district court dismissed the case. The appeals court affirmed in part, reversed in part and remanded. The appeals court held that allegations that the arrestee was subjected to maltreatment while in custody as a pretrial detainee were properly treated as claims arising under the Due Process Clause. The court found that a deputy sheriff who transported the arrestee to a city jail did not violate the due process rights of the arrestee. According to the court, the arrestee's intoxication, his tattoo questioning life, and his angry cursing did not indicate an obvious, substantial risk of suicide. The court found that failing to monitor the arrestee or recognize the risk of suicide was, at most, negligence. The arrestee was admitted to the holding cell of a city police department at 1:00 a.m. and died of suffocation after hanging himself with a blanket sometime between 1:00 a.m. and 4:04 a.m. (Madison County Sheriff's Department, City of Madison Police Department, Illinois)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Perkins v. Grimes, 161 F.3d 1127 (8th Cir. 1998). A pretrial detainee, who was raped by another inmate, sued jail officials under § 1983 for failing to protect him. The district court entered judgment for the officials and the detainee appealed. The appeals court affirmed, finding that jailers were not deliberately indifferent to the detainee's safety when they housed him with an inmate who raped him. The court noted that although jailers were on notice that the inmate was easily provoked, they also knew that the detainee and

the inmate had previously been housed together without incident, and the jailers neither knew, nor had reason to know, that the inmate was a violent sexual aggressor. The detainee had been arrested for public intoxication and was booked at a county facility and placed in a holding cell for approximately five and one-half hours. During the final hour of his time in the holding cell, the detainee shared the cell with an inmate who was also booked for public intoxication. The detainee was subsequently raped by the inmate, who was larger and heavier. The detainee alleged that a jail officer was aware of the assault and did not intervene. (Sebastian County Adult Detention Center, Arkansas)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Ramsey v. Busch, 19 F.Supp.2d 73 (W.D.N.Y. 1998). An inmate brought a civil rights suit against correctional officers and a supervisor alleging they exposed him to an assault by another inmate and conspired to cover up evidence of the assault. The district court found that the inmate stated a claim under the Eighth Amendment, but that the corrections officers were entitled to qualified immunity. The inmate alleged that he was taken by an officer to another inmate's cell on his way to the shower, that the other inmate threw human excrement at him, and that the officer took him past the cell again on his way back, posing a threat to his health and safety. (Clinton Correctional Facility, New York)

U.S. District Court
PRISONER SUICIDE

Sanders v. Howze, 50 F.Supp.2d 1364 (M.D.Ga. 1998). The estate of a prisoner who committed suicide while in a county jail brought a § 1983 action against jail officials. The district court denied summary judgment for the officials finding it was barred by fact issues as to whether the officials were deliberately indifferent to the prisoner's known suicidal propensity and whether the county had adequate policies for dealing with potential suicides. The court also found a material issue of fact as to whether county jail officials were properly trained in dealing with potential suicides. After being confined in the jail for six weeks the prisoner removed a razor blade from a disposable razor and cut his wrists. He was transferred to a state hospital for a psychological evaluation but returned to the jail two months later. He was placed in an isolation cell near the jailer's office, where he hung himself a week later from a light fixture with a bed sheet. A few days earlier a judge had ordered a psychiatric evaluation which was in the process of being arranged by the sheriff. (Dougherty County Jail, Georgia)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Soto v. Johansen, 137 F.3d 980 (7th Cir. 1998). An inmate who was assaulted by other inmates for not paying "cell rent" brought a § 1983 action against prison employees alleging that they failed to adequately protect him. The district court entered judgment for the employees and the appeals court affirmed. The inmate asserted that he told his prison counselor that other inmates were demanding payments from him, but the counselor's notes indicate that the inmate stated that he did not want to be placed in protective custody. The inmate was assaulted a week later. (Pontiac Correctional Center, Illinois)

U.S. District Court
THREATS

Spicer v. Collins, 9 F.Supp.2d 673 (E.D.Tex. 1998). A state prisoner brought a § 1983 action against prison officials and staff. The district court dismissed the case. The court held that the inmate failed to state a claim based on prison officials' alleged verbal threats, harassment and insults. The court found that the alleged threats were of such a magnitude that they constituted a substantial risk of harm to the inmate. The court found that the inmate failed to state a claim for failure to take action to protect him after he reported that correctional officers had made verbal threats to him. The court concluded that the prisoner failed to suffer "some injury" as required for a § 1983 claim, when he claimed that he suffered only pain in his neck, arms and hands as the result of being handcuffed, and claimed no physical injury as the result of being grabbed by the arm, absent evidence that the force used by officers was repugnant to the conscience of mankind. (Stiles Unit, Texas Department of Criminal Justice-Institutional Division)

U.S. District Court
OFFICER ON PRISONER ASSAULT

Sprau v. Coughlin, 997 F.Supp. 390 (W.D.N.Y. 1998). A prisoner sued state corrections officials alleging that they deprived him of his rights to freedom of speech and to petition the government for redress of grievances. The district court denied summary judgment for a corrections officer, finding that a genuine issue of material fact existed as to whether the officer assaulted the prisoner in retaliation for the prisoner's threat of filing a grievance against him. The officer allegedly grabbed the prisoner behind the neck and hit him several times. (Attica Correctional Facility, New York)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Spruce v. Sargent, 149 F.3d 783 (8th Cir. 1998). A state inmate brought a § 1983 action against corrections officials alleging that they failed to protect him from sexual assault and rape by other inmates. The district court decided in favor of the defendants and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded, finding that evidence of the unit warden's deliberate indifference to the excessive risk of harm faced by the inmate was a matter for the jury, but that evidence did not establish that an assistant director had knowledge that the inmate faced an excessive risk of rape. According to the court, evidence showed that the unit warden had denied the inmate's request not to be in a cell with a particular inmate, who allegedly later forced him to perform oral sex. (Arkansas Department of Correction)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Steidl v. Gramley, 151 F.3d 739 (7th Cir. 1998). A prisoner brought a § 1983 action against a warden for failing to protect him from an attack by fellow inmates. The district court dismissed the case and the appeals court affirmed. The appeals court held that the warden could not be held liable based on the allegation that he knew or should have known that the chances of inmate-on-inmate violence were greatly enhanced by the disappearance of a razor blade. The court also held that the alleged absence of guards in towers and a catwalk overlooking the prisoner's unit at the time of the attack did not give rise to liability on the warden's part, as the warden was not responsible for such aspects of the day-to-day operations at the prison. According to the court, a warden is not responsible for the failure of his subordinates to carry out prison policies unless the subordinates are acting, or failing to act, on the warden's instructions. (Pontiac Correctional Center, Illinois)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Turquitt v. Jefferson County, Ala., 137 F.3d 1285 (11th Cir. 1998). The estate of a pretrial detainee who was killed during an altercation with another inmate at a county jail filed a civil rights action against the county. The district court denied the county's motion to dismiss and the county appealed. The appeals court vacated and remanded, finding that an Alabama county cannot be liable in a civil rights case for harms that befall jail inmates due to improper operation of the jail or negligent supervision of its inmates because the county has no responsibility in that area. According to the court, the sheriff, not the county, is responsible for jail conditions under Alabama law; counties have no duties with respect to daily operation of county jails and have no authority to dictate how jails are run. The deceased inmate was fatally injured in a fight with another inmate, who was a convicted felon, in the dayroom of the jail. (Jefferson County Jail, Alabama)

U.S. District Court
PRISONER SUICIDE

Vinson v. Clarke County, Ala., 10 F.Supp.2d 1282 (S.D.Ala. 1998). A § 1983 action was brought by the administrator of the estate of an intoxicated arrestee who had committed suicide while being held in a county jail. The district court granted summary judgment in favor of the defendants, finding that the sheriff and jailer acted within the scope of their discretionary authority and did not violate clearly established law. The court held that the county was not deliberately indifferent to the risks of suicide. According to the court, it was not clearly established in October 1994 that a county sheriff's failure to train jail personnel in the care of intoxicated inmates amounted to deliberate indifference. The court found that the risk of suicide among a class of intoxicated detainees at the county jail was not so obvious that the county's failure to remedy conditions of confinement which gave detainees the opportunity to commit suicide could be seen as showing deliberate indifference. The detainee committed suicide within 30 minutes of his admission by hanging himself from the bars of his jail cell. An autopsy revealed that the detainee's blood contained .205 percent alcohol, which was well over the maximum of .1 allowed under state DUI law. (Clarke County Jail, Alabama)

U.S. District Court
THREATS

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
PRISONER ON PRISONER ASSAULT

Webb v. Lawrence County, 144 F.3d 1131 (8th Cir. 1998). A prisoner who was allegedly sexually assaulted by a cellmate brought an action against a county, sheriff, and sheriff department employees, asserting § 1983 and state-law negligence claims. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the prisoner failed to establish that the defendants actually knew of a substantial risk of harm to the prisoner from his cellmate. The appeals court also held that the defendants were protected by state statutory immunity on the prisoner's negligence claim. The court noted that while the defendants knew generally of the risk of inmate rape and assault for young, physically slight inmates such as the plaintiff, there was no evidence or allegations that inmate rape was common in this particular institution, nor was there evidence that the cellmate, who was a sexual offender, had assaulted other inmates or caused any other problems while incarcerated. Further, the prisoner had requested to be placed with the cellmate. (Lawrence County Jail, South Dakota)

U.S. District Court
OFFICER ON PRISONER ASSAULT

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
PRISONER ON PRI-
SONER ASSAULT

Wilson v. Wright, 998 F.Supp. 650 (E.D.Va. 1998). A prison inmate brought a § 1983 action alleging violation of his Eight Amendment rights by his assignment to a cell with an inmate who had a history of violence. The district court denied summary judgment for the defendants, finding that it was precluded by fact questions on the issue of deliberate indifference. But the court found that a prison employee was entitled to qualified immunity, but noted that under the new Farmer standard, a different result would have been reached. The plaintiff was a 5'8" tall white male who was 18 years old when he was sentenced to 28 years imprisonment. He was assigned to share a cell with a 38-year-old 6'1" African-American male who was serving time for forcible sodomy. Seven days later, in the cell they shared, the cellmate assaulted and forcibly sodomized the plaintiff. (Greensville Correctional Center, Virginia)

1999

U.S. District Court
SUICIDE ATTEMPT

Anton v. Sheriff of DuPage County, Ill., 47 F.Supp.2d 993 (N.D.Ill. 1999). A pretrial detainee brought a § 1983 action against a county and county officials alleging that he was subjected to unconstitutional conditions of confinement at a county jail. The district court refused to dismiss the case, finding that his alleged exposure to low temperature in a detention cell while naked and with no alternative means of protecting himself from the cold supported a claim of inadequate shelter against the county. The detainee allegedly repeatedly complained to jail officers for hours and they responded with jeers and laughter, and he was not provided with medical care until he threatened litigation. When a nurse finally attended to the detainee, his body temperature was three degrees below normal. The detainee had just attempted suicide and had been placed in a rubberized cell without clothing and was observed every 15 minutes. The court also found that deputies' alleged thwarting of medical treatment given to the detainee supported a claim of violation of his right to medical attention. The officers allegedly removed a blanket that was given to the detainee by the nurse, which the court held supported a claim for deliberate indifference. The court denied qualified immunity for the officers, finding that it was clearly established at the time of this incident that pretrial detainees had a constitutional right to adequate heat and medical attention. (DuPage County Jail, Illinois)

U.S. District Court
PROTECTION FROM
HARM

Baumann v. Walsh, 36 F.Supp.2d 508 (N.D.N.Y. 1999). An inmate who was injured by falling off a top bunk and then reinjured by falling off a shelf at his prison job sued prison officials under § 1983. The district court dismissed all defendants from the case except the inmate's shop supervisor. The court held that the inmate had an objectively serious medical need and that a substantial risk of harm existed with respect to the inmate's working conditions because he was made to climb along shelves and stand on boxes to retrieve material from the top shelves of a storage room. The court denied summary judgment for the shop supervisor, citing material issues of fact to be resolved regarding the supervisor's notice of unsafe work conditions and whether a ladder was available for use by the inmate. (Franklin Correctional Facility, New York)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Campbell v. Emory Clinic, 166 F.3d 1157 (11th Cir. 1999). An inmate who was injured when he was attacked by another inmate brought a § 1983 action against a correctional facility and prison officials. The district court entered summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the inmate failed to provide evidence from which reasonable jurors could find that prison officials knew of and were deliberately indifferent to a substantial risk of serious harm to the inmate, resulting in the inmate's injury. (Fountain Correctional Center, Alabama)

U.S. District Court
SEXUAL ASSAULT
OFFICER ON PRISONER
ASSAULT

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
PRISONER ON
PRISONER ASSAULT

Echevarria v. Dept. of Correct. Services of N.Y., 48 F.Supp.2d 388 (S.D.N.Y. 1999). A pro se inmate brought a § 1983 action against a city and prison officials alleging they failed to protect him from an attack by another inmate. The district court found that the inmate failed to state claims against the city and a prison warden. The inmate was attacked by another inmate who scaled two nine-foot fences to get to him, but the practice of bringing inmates to adjacent cages was a departure from ordinary prison practices. (Riker's Isl. Corr. Facility, New York City)

U.S. District Court
PRISONER ON PRIS.
ASSAULT

Edney v. Karrigan, 69 F.Supp.2d 540 (S.D.N.Y. 1999). An inmate brought a § 1983 action against a prison supervisor and a correctional officer alleging they failed to protect him from an attack by another prisoner. The district court granted summary judgment for the defendants, finding that the inmate's allegations that prison officials were aware of the dangers associated with other inmates' trading of guns, drugs and other contraband in the area where the inmate was attacked did not state a claim under the Eight Amendment, absent allegations that the officials knew of risks present on the day the inmate was attacked. (Riverview Correctional Facility, New York)

U.S. Appeals Court
PRISONER SUICIDE

Ellis v. Washington County and Johnson City, Tenn., 198 F.3d 225 (6th Cir. 1999). A mother and a minor child of a deceased pretrial detainee brought a wrongful death action under § 1983 against a city, county, and jailers after the detainee committed suicide in a county jail. The district court entered summary judgment for all defendants except for one jailer and the plaintiffs and jailer appealed. The appeals court affirmed, finding that the county's alleged failure to train jailers on suicide prevention was not the proximate cause of the detainee's injury absent any circumstances from which a reasonable jailer would have foreseen the suicide. The appeals court also found that one of the jailers was entitled to qualified immunity even though he made a mistake in assessing the detainee's suicidal tendencies because he was not deliberately indifferent toward the detainee and exhibited a genuine concern for the detainee's welfare while confined. But the appeals court refused to grant summary judgment for one jailer because of his alleged delay in informing an emergency medical team of his alleged observation of the detainee tying a noose in his cell. The detainee committed suicide by hanging himself in a county jail three hours after his transfer from a city jail. The cell in which the detainee hung himself had a monitor camera at one end but was not designed as a suicide prevention cell. The detainee had been held overnight at a city jail after he was arrested because he was believed to be drunk or under the influence of drugs. After his arraignment the following morning he was taken to the county jail where, during the three hours preceding his suicide, "nothing occurred that would put reasonable jailers on notice of a possible suicide attempt" according to the appeals court. The detainee was asked about possible suicidal tendencies when he was admitted to the jail and responded that he "loved life." A few minutes later a jailer who had gone to high school with the detainee came on duty and was concerned about his mental health. The jailer found the detainee talking on the phone to his mother and seemingly crying. After the call the jailer asked the detainee if he was feeling suicidal and the detainee responded "Hell no, I've got a baby on the way that I've got to take care of." But most persuasive to the court was the statement of the mother in a letter two months after the death of her son that her son was "not suicidal at 11:30 when I talked to him [on the phone]...knew he was getting out [of jail]." The detainee's mother was an experienced, practicing, licensed clinical psychologist who held a Ph.D., and the court considered her statement to be an expert opinion. The appeals court held that it was "unreasonable to attribute fault to the County or its jailers for failing to predict suicide." (Johnson City Jail, Washington Co. Jail, Texas)

U.S. District Court
ELECTRONIC
MONITORING

Estate of Brown v. Barian, 43 F.Supp.2d 1008 (E.D.Wis. 1999). The parents of a shooting victim brought a § 1983 action against state corrections officials arising from their failure to apprehend an inmate who had violated the terms of his electronic monitoring custody 158 times before the shooting incident that claimed the life of their son. The district court dismissed the case, finding that the allegations did not support a § 1983 substantive due process claim because corrections officials did not owe the victim a constitutional duty to protect him from the inmate's random shooting spree. The inmate was serving the remainder of a two year sentence following his release from prison under a program called the Division of Intensive Sanctions (DIS). Under DIS the inmate was required to remain within 30 yards of his electronically monitored telephone at his residence, but in a seven month period prior to the shooting the inmate had violated this requirement 158 times and had then disconnected his phone service. In spite of these violations, the corrections department did not authorize an apprehension order to arrest the inmate and return him to prison, even though a corrections agent and case supervisor had both requested issuance of the order. (Wisconsin Department of Corrections, Division of Community Corrections)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT

Giron v. Corrections Corp. of America, 191 F.3d 1281 (10th Cir. 1999). A female inmate brought a § 1983 action against officers at a correctional facility alleging that she had been raped by a prison guard and that she was denied necessary medical care. The district court entered partial summary judgment for the officials and subsequently entered judgment on jury verdict for the officials on the remaining claims. The appeals court reversed and remanded in part, finding that it was plain error to instruct the jury that to find the guard liable on the excessive force claim, it had to find both that he forced the inmate to have sexual intercourse and that the use of force was applied maliciously for the purpose of causing harm. (New Mexico Women's Correctional Facility)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT
SUPERVISION

Giroux v. Somerset County, 178 F.3d 28 (1st Cir. 1999). A jail inmate who had been assaulted by another inmate sued a jail employee, sheriff and county alleging violations of § 1983. The district court granted summary judgment for the defendants and the inmate appealed, the appeals court vacated and remanded, finding that summary judgment was precluded by a factual dispute about the scope of the jail shift supervisor's responsibility and whether he abdicated his responsibility. The inmate was threatened by a cellmate when he left his cell to meet with a detective. After the meeting the inmate was moved to a different cell,

apparently in response to the threat. The inmate was threatened again the next day when he was escorted past his former cell, and was allegedly threatened by other inmates while dining. The inmate requested protective custody. Although he was not moved, he was placed on "cell feed" status which eliminated his contact with other inmates in the common dining area. Several days later the inmate was involved with a visit which required him to use a common visiting area. While in the visiting area he was assaulted by his former cellmate who was also involved with a visit. The inmate suffered a broken nose, torn shoulder ligaments and a head laceration which required stitches. (Somerset County Jail, Maine)

U.S. District Court
PAROLE

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

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE

Grayson v. Peed, 195 F.3d 692 (4th Cir. 1999). The administrator for the estate of a deceased detainee sued officers and county officials under § 1983 asserting constitutional violations, negligence, gross negligence, negligent training and negligent supervision. The district court granted summary judgment for the defendants on all § 1983 claims and declined to assume supplemental jurisdiction over state law claims. The appeals court affirmed. The detainee had been arrested and transported to the county detention center and the following day was declared brain dead. During his booking the detainee was acting irrationally, his speech was slurred, and he kept repeating in an intoxicated manner "I can't believe this is all over a traffic ticket." He was then taken to a cell and strip searched, but at the conclusion of the search attempted to crawl out of the cell and a struggle ensued. Officers used pepper spray to subdue him. Early the next morning the detainee began acting belligerent again. He resisted being moved to another cell and a five-man cell extraction team pinned him face down. During the struggle he was sprayed with pepper spray and he was punched several times. Once restrained, he was carried face down to another cell and was placed in four-point restraints. A few minutes later he appeared to be unconscious and was checked by medics and was found to be "okay." Another officer then noticed that the detainee was not breathing, CPR was initiated and he was taken to a local hospital where he was found to be brain dead. The appeals court held that officers at the county detention center were not deliberately indifferent to the medical needs of the deceased detainee, either when the detainee was booked or during his custody. A trained medic was on hand in the booking area and discerned no sign of a medical problem. According to the court, the failure to clean pepper spray off of the detainee in a timely manner was, in the first instance, due to the detainee's violent response to the officer's offer to wash the spray off, and in the second instance was due to the need to rush the detainee to a hospital for emergency care. The appeals court held that the officers did not use excessive force against the detainee, but rather that they applied the force necessary in a good faith effort to restore discipline. The court also found that there were no actionable deficiencies in the sheriff's policies, customs or training. According to the court, "...the appellant's own expert penologist conceded that [sheriff] Peed's policies met the standards of both the Virginia Board of Corrections and the American Correctional Association." (Fairfax County Adult Detention Center, Virginia)

U.S. Appeals Court
PRISONER SUICIDE

Lambert v. City of Dumas, 187 F.3d 931 (8th Cir. 1999). The family of a detainee who died in his jail cell brought a § 1983 action against a city and police officers, asserting claims for unlawful arrest, excessive force and wrongful death. The district court denied the defendants' motion for summary judgment and the appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment was precluded by factual issues regarding the amount and degree of force used during the detainee's arrest, but that the officers were not liable for wrongful death, absent any evidence that the officers were subjectively aware of any risk that the detainee would inflict harm on himself. The detainee did not threaten to commit suicide during his incarceration or otherwise indicate that he might do so, he was never classified as a suicide risk, and the officers were not shown to have knowledge of a prior incident when the detainee swallowed a metal crack pipe. The court noted that a showing that a jailer was negligent in failing to recognize a prisoner's suicidal tendencies is insufficient to satisfy the § 1983 deliberate indifference standard. (Dumas Police Department, Arkansas)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT

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. District Court
PRISONER ON PRISON ASSAULT

Lopez v. LeMaster, 172 F.3d 756 (10th Cir. 1999). A pretrial detainee who was beaten by other inmates while confined in a jail brought a § 1983 action against the county sheriff individually and in his official capacity. The district court granted summary judgment in favor of the sheriff and the detainee appealed. The appeals court affirmed in part, reversed in part and remanded. The detainee was arrested and placed in a general population cell in the county jail where he was threatened by another inmate. A jail officer took the detainee to an office where he prepared a written statement about the threat. But the officer returned the detainee to the general population cell where he was attacked and beaten by several inmates. The officer returned later and the detainee asked to be taken to the hospital. The officer took the detainee to an office, called an unknown person to ask for instructions, and then told the detainee "you are still conscious, we don't have to take you." The detainee was given aspirin, placed in a different cell and was released the next day. He went to the hospital after his release and was diagnosed with a severe contusion to the skull with post-concussion syndrome and a severe strain to the cervical, thoracic and lumbosacral spine. But the appeals court found that material issues of fact precluded summary judgment on the claim that the county maintained an unconstitutional policy of understaffing the jail and failing to monitor inmates, with deliberate indifference to inmate health or safety. The court noted that a suit against the sheriff in his official capacity is the equivalent of a suit against the county. The appeals court found that fact issues precluded summary judgment for the sheriff in his individual and official capacities on the detainee's failure to protect claims. The appeals court also held that summary judgment was precluded on the detainee's claim alleging that the sheriff was deliberately indifferent to his serious medical needs. (Jackson County Jail, Oklahoma)

U.S. District Court
PRISONER ON PRISON ASSAULT

Matthews v. Armitage, 36 F.Supp.2d 121 (N.D.N.Y. 1999). The widow of an inmate who was stabbed by another inmate brought a civil rights action against prison officials alleging 8th Amendment violations. A jury returned a verdict in favor of the widow but awarded only nominal damages of one dollar against the officials. The district court granted the defendants' motion for judgment as a matter of law, holding that the officials did not act with deliberate indifference to the inmate's health and safety and were entitled to qualified immunity. The court noted that the two inmates had coexisted in each other's presence in the general population at least 50 times without incident and that there had never been a stabbing in the protective custody unit before. (Clinton Correctional Facility, New York)

U.S. District Court
OFFICER ON PRISON ASSAULT

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 canister 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
OFFICER ON PRISON ASSAULT

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. District Court
PRISONER ON PRISON ASSAULT

Preval v. Reno, 57 F.Supp.2d 307 (E.D.Va. 1999). A detainee of the Immigration and Naturalization Service (INS) filed a pro se action under § 1983 alleging violation of his constitutional rights. The district court found that loud noise, constant light, bad odor and low room temperature could not be characterized as "punishment" unrelated to the detainee's

detention. The district court also found that the detainee failed to state a due process claim based on INS staff failure to protect him from an assault by another inmate, where there was no allegation that any official or staff member was aware of the potential for the specific altercation before it took place. (Piedmont Regional Jail, Virginia, under contract to the Immigration and Naturalization Service)

U.S. District Court
SUICIDE
SUPERVISION

Sanders v. Howze, 177 F.3d 1245 (11th Cir. 1999). The administratrix of a detainee's estate sued jailers alleging violation of the detainee's Eighth and Fourteenth Amendment rights arising from the detainee's suicide in jail. The district court denied summary judgment for the jailers and they appealed. The appeals court reversed and remanded with directions. The appeals court held that the jailers were entitled to qualified immunity, absent any preexisting Eleventh Circuit caselaw clearly establishing that the suicide prevention measures taken by the jailers were so inadequate as to constitute deliberate indifference. Several weeks after he was arrested and placed in the jail, the detainee removed a razor blade from a disposable razor and cut his left wrist. Following jail policies, staff transported the detainee to a local hospital's emergency room for treatment and evaluation. He was then transferred to a state hospital where he remained for several months. He returned to the jail and was placed in the general population where two days later he used a pencil to reopen his wrist wound. He was treated at the local hospital and returned to the jail the same day, where he was placed in an isolation cell near the jailers' office to prevent his access to items that might be used to injure himself. The next day he reopened the wound, was treated at the hospital, and returned to the isolation cell. He was transferred to a state hospital for several weeks and was placed in an isolation upon his return. The state hospital gave no special instructions concerning his care. The county petitioned the court for a psychiatric evaluation of the detainee but before the evaluation could be conducted the detainee was found dead, hanging from a light fixture in his cell by a bedsheet. Two jailers were on duty the night the detainee died but they did not detect his death for four to six hours after it occurred, despite a jail policy requiring lights in isolation cells to remain on at all times and for inmates in isolation are to be visually monitored every 30 minutes. (Dougherty County Jail, Georgia)

U.S. Appeals Court
PRISONER SUICIDE
ATTEMPT

Sibley v. Lemaire, 184 F.3d 481 (5th Cir. 1999). A former pretrial detainee brought an action against correctional officers alleging they were liable under § 1983 for injuries that the detainee had inflicted on himself. The district court granted summary judgment for the officers. The appeals court affirmed, finding that the officers' failure to call a doctor when the detainee's mental condition appeared to worsen did not amount to deliberate indifference to his serious medical needs. The detainee had undergone a psychotic episode while being detained in an isolation cell and had physically blinded himself by plucking out his eyes. (Vermillion Parish Correctional Center, Louisiana)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Sinnett v. Simmons, 45 F.Supp.2d 1210 (D.Kan. 1999). An inmate brought a § 1983 action against various prison workers alleging interference with his freedom of religion, violations of due process and equal protection, and failure to provide adequate protection. The district court granted summary judgment for the defendants. The district court held that even if the inmate's fast had been religious in nature, and a prison worker therefore had no obligation to counsel the inmate on the effects of starvation pursuant to a prison regulation on hunger strikes, such counseling constituted de minimis interference with the inmate's right to exercise of religion and was not of constitutional significance. The court ruled that correctional officers did not unreasonably interfere with the inmate's right to exercise his religion by threatening to place him in a medical clinic or in administrative segregation during his fast, since the inmate would have been free to exercise his religious right to fast in any area of the prison. The court found that the inmate had no liberty interest in a prison-to-prison transfer, absent a showing that a transfer resulted in a hardship that was "atypical" or "significant" when compared to ordinary prison life. Denial of smoking privileges, extended exercise time, library visits, and participation in certain programs had been necessary to contain disturbances throughout the correctional system and the restrictions were lifted within three weeks. The court held that prison staff did not violate the prisoner's Eighth Amendment rights to be protected from harm when they placed an inmate with a violent history in protective custody with him, even though he had been labeled a "snitch" for cooperating with prison officials. The court noted that the prison staff lacked knowledge that the violent inmate would harm the cooperating inmate. (Ellsworth Correctional Facility, Kansas)

U.S. District Court
PRISONER SUICIDE

Smith v. Blue, 67 F.Supp.2d 686 (S.D.Tex. 1999). The parents of a juvenile who committed suicide while in custody at a juvenile detention center operated by a county sued the county and facility supervisors under § 1983. The district court declined to dismiss the case, finding that the parents stated a § 1983 claim against the county for violating the juvenile's Fourteenth Amendment right to medical protection against his own suicidal intentions, and that the parents stated a wrongful death claim. The court found that the facility supervisors' practice of pre-entering cell inspection records and then avoiding making actual visual checks on juveniles was so pervasive that it constituted a policy or custom and was the result of inadequate training. The court found that a wrongful death claim was stated by the allegation that the juvenile's death was caused by a bedsheet left unsupervised in his cell. At the time of his detention the juvenile had been diagnosed as suffering from attention deficit disorder and this was confirmed in evaluations done after his admission. During his four-month stay the juvenile allegedly threatened suicide and physically

harmed himself on several occasions. When his behavior worsened to the point that he refused to come out of his cell and began hiding under his bed, he was placed in solitary confinement as punishment for refusing to follow directions. While in solitary confinement he was allowed to keep several personal items, including a towel, T-shirts, athletic shoes with laces, and a bed sheet. One evening he was found dead, hanged from a loose sprinkler head with a bedsheet. Written cell inspection reports indicated that staff had visually checked on the juvenile every 15 minutes until the discovery of his body, but a subsequent investigation revealed that the records had been altered after the body was discovered. The original records stated that the juvenile had been checked every fifteen minutes before his death and for *four hours* after his death. Staff admitted that it was routine practice to complete inspection reports beforehand and to fail to make the required visual checks. Investigators determined that the juvenile had been dead for an hour before his body was discovered, confirming that the 15-minute checks had not been conducted. (Delta 3 Boot Camp, Harris County, Texas)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Snell v. DeMello, 44 F.Supp.2d 386 (D.Mass. 1999). A jail inmate brought a § 1983 suit against a sheriff and various prison officials alleging failure to protect him from an attack by another inmate. The district court granted summary judgment for the defendants finding that the inmate failed to state a claim for supervisory liability and that the defendants provided adequate medical care. The court noted that the inmate was immediately treated after the attack by the another inmate, the next day he was again treated by a physician and three days later was taken to a hospital for X-rays which showed no injury. The inmate had allegedly reported being threatened by other inmates but the court held that the inmate failed to show that the sheriff, prison superintendent or state commissioner for corrections either knew of a substantial risk to the inmate or harbored a subjective belief that he faced potential injury from other inmates. The inmate testified that he had conversations with the sheriff and jail administrator in which he indicated that he had received threats of bodily harm from other inmates and that he sent a letter through the internal mail system addressed to the sheriff and others asking to be moved to an alternate housing unit "to prevent any further aggression or physical assault." (Barnstable County Jail and House of Correction, Massachusetts)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Snider v. Dylag, 188 F.3d 51 (2nd Cir. 1999). An inmate brought a § 1983 suit against a correctional officer for alleging telling other inmates that it was "open season" on him. The district court dismissed the action but the appeals court vacated the decision and remanded the case. The appeals court held that the inmate had stated a claim under § 1983 for violation of his Eighth Amendment right to be free from cruel and unusual punishment and his Fourteenth Amendment right to be protected equally. The court noted that although the officer was not present when the inmate was assaulted by two or three other inmates, this was not required for the inmate to establish a violation of his rights by the officer. (Attica Corr'l. Facility, New York)

U.S. District Court
TRANSPORTATION

Spencer v. Knapheide Truck Equipment Co., 183 F.3d 902 (8th Cir. 1999). A pretrial detainee who had suffered injuries that rendered him quadriplegic after he was placed with his hands cuffed behind his back in a police transport vehicle, and was thrown forward into the bulkhead of the passenger compartment, brought a § 1983 action against city officials. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that neither the purchase of patrol wagons which lacked safety restraints, nor the manner of transporting arrestees in those wagons, showed deliberate indifference to the rights of the pretrial detainee. (Kansas City Police Department, Missouri)

U.S. District Court
SUICIDE
WRONGFUL DEATH

Thornton v. City of Montgomery, 78 F.Supp.2d 1218 (M.D.Ala. 1999). The relatives of a jail inmate who committed suicide while in custody filed a wrongful death action. The district court granted summary judgment for the defendants, finding that the jail officials' failure to prevent the suicide did not violate sections 1985 and 1986 and that the city could not be held liable under § 1983. The court found that whether the jail officials handled the inmate under a mental health policy or under their suicide risk policy, they were no less diligent and were adequately trained in both policies. The court found that the city and the jail officials were not deliberately indifferent to the detainee's medical needs. The court held that the officials were not liable for failing to train jail officers and staff. The detainee died of asphyxiation and a spoon was found in his mouth. He had been placed in a cell reserved for inmates with mental health problems after he repeatedly claimed he was going to die during the admission process. (Montgomery City Jail, Alabama)

U.S. District Court
MEDICAL CARE

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

process rights by releasing him rather than providing medical treatment, for the purposes of a § 1983 conspiracy claim. (City of Chanute, Kansas)

U.S. District Court
FIRE

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

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

White v. Lemacks, 183 F.3d 1253 (11th Cir. 1999). A nurse and the administrator for another nurse's estate brought a § 1983 action alleging substantive due process violations against a sheriff, deputy sheriff, and county, based on an incident in which the nurses were attacked and beaten by a county jail inmate while they worked in the jail infirmary. The district court dismissed the case and the appeals court affirmed. According to the appeals court, the fact that a government employee would risk losing her job if she did not submit to unsafe job conditions does not convert a voluntary employment relationship into a custodial relationship, and therefore does not entitle to employee to substantive due process protection from workplace hazards, including harm caused by third parties. The nurses worked for Prison Health Services, Inc, which was under contract to provide medical services to the county jail. As a condition of their job, and while performing their nursing duties at the jail, they were required to be in close contact with inmates, and their freedom of movement and ability to flee or otherwise protect themselves were limited. The nurses were attacked and brutally beaten by an inmate who also subdued a deputy who had been assigned to protect the nurses. (Clayton County Jail, Georgia)

U.S. Appeals Court
PRISONER SUICIDE

Williams v. Mehra, 186 F.3d 685 (6th Cir. 1999). The personal representative of the estate of a deceased inmate who committed suicide while incarcerated at a state prison brought a § 1983 action against two prison psychiatrists. The district court denied summary judgment for the psychiatrists but the appeals court reversed and remanded, finding the psychiatrists were entitled to qualified immunity. The appeals court held that the failure of the psychiatrists to change the inmate's medication from tablets to liquid, despite some evidence of suicidal ideation, did not amount to deliberate indifference, absent evidence comparing the risks of liquid distribution to pill distribution. (State Prison of Southern Michigan)

2000

U.S. Appeals Court
PRISONER SUICIDE

Anderson v. Simon, 217 F.3d 472 (7th Cir. 2000). A widow of a county prisoner brought a § 1983 action against a prosecutor alleging that he violated the prisoner's Fourth and Fourteenth Amendment rights by failing to approve charges against him and ordering police to keep him in custody until a lineup could be arranged, leading to his death from suicide. The district court dismissed the action and the appeals court affirmed. The appeals court held that the prosecutor was absolutely immune from the claim predicated on a delay in charging. The prisoner had been held in a police lockup pending charging. During the night the prisoner began to experience heroin withdrawal symptoms and told officers on duty that he was becoming depressed and wanted to kill himself. A lineup was held the next afternoon and the prisoner was found dead in his cell, hanging from a noose, early that evening. (25th District Police Station, Chicago, Illinois)

U.S. District Court
PRISONER SUICIDE

Brewer v. City of Daphne, 111 F.Supp.2d 1299 (S.D.Ala. 1999). The mother of a jail inmate who committed suicide brought a civil rights action against a city and city officials, alleging they failed to provide adequate psychological care to the inmate prior to his suicide and failed to protect him from self-inflicted harm. The district court granted summary judgment in favor of the defendants. The court held that there was no official policy, custom, or lack of training which gave rise to § 1983 liability against the city for failing to prevent the inmate's suicide. The inmate had been confined for more than a month of his 18-month sentence when he returned to the jail from a work release job and was found to be under the influence of alcohol. The inmate was found dead in his cell later having died from asphyxiation caused by hanging. The court found that evidence did not establish that the inmate had a serious psychological need prior to his death and that there was no proof that officials knew that the inmate faced a substantial risk of harm given his intoxicated state on the day of his death. (Daphne City Jail, Alabama)

U.S. District Court
SEXUAL ASSAULT
OFFICER ON
PRISONER ASSAULT
JUVENILES

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. District Court
PRISONER ON
PRISONER ASSAULT

Burciaga v. County of Lenawee, 123 F.Supp.2d 1076 (E.D.Mich. 2000). A pretrial detainee brought a civil rights action against county officials, alleging harm as the result of housing him with an assaultive prisoner. The district court granted summary judgment for the defendants. The court held that the county did not violate the detainee's due process rights by housing him with another detainee or by improperly classifying both inmates as medium-security inmates. Both inmates had been previously incarcerated for assault. (Lenawee County Jail, Michigan)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Curry v. Crist, 226 F.3d 974 (8th Cir. 2000). Heirs of an inmate who was murdered by fellow prisoners while the two were alone in an unsupervised area of a prison brought a civil rights action against the prison warden. The district court granted summary judgment in favor of the warden and the appeals court affirmed. The appeals court held that the warden was not deliberately indifferent to the risks of allowing the inmate to work with the other prisoner in an unsupervised area of the prison. The court noted that the prisoner who made the fatal attack had been convicted of multiple murders and had made threats, 16 months earlier, to murder his fellow inmates. According to the court, there was no evidence that the murderer harbored any animosity toward the murdered inmate or that his selection of him as his victim was anything but fortuitous. The court noted that prison officials are not required to segregate indefinitely all inmates whose original crimes suggest that they might be capable of further violence. The inmate admitted that he killed the prisoner in their basement work area with a stolen plumber's pipe during a 30-minute period between guard patrols. (Stillwater Correctional Facility, Minnesota)

U.S. District Court
SEXUAL ASSAULT
OFFICE ON
PRISONER ASSAULT

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

U.S. Appeals Court
SEXUAL ASSAULT
OFFICER ON PRISON-
ER ASSAULT

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

U.S. District Court
PRISONER ON
PRISONER
ASSAULT

Delph v. Trent, 86 F.Supp.2d 572 (E.D.Va. 2000). A state inmate brought a § 1983 action against supervising officials at a correctional facility, alleging that they created or condoned official policies, procedures and customs that allowed him to be assaulted by another prisoner and denied medical care for injuries incurred during the assault. The district court held that the officials' conduct in connection with the assault was not deliberate indifference in violation of the Eighth Amendment, even though an official was aware of hostility between the two inmates before the assault. The court noted that the official ordered the cell doors closed to keep the inmates away from each other, stepped between the inmates and attempted to restore order after the confrontation started, and called for backup and restrained the perpetrator when the situation

became violent. (Mental Health Unit, Greensville Correctional Center, Virginia)

U.S. District Court
PRISONER SUICIDE

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. Appeals Court
PRISONER SUICIDE

Estate of Novack Ex Rel. Turbin v. County of Wood, 226 F.3d 525 (7th Cir. 2000). The estate and mother of an inmate who committed suicide filed a § 1983 action against a county. The district court granted summary judgment to the county and the appeals court affirmed. The appeals court held that mere knowledge that an inmate is behaving violently or "acting in a 'freaky' manner" is not sufficient to impute an awareness of a substantial risk of suicide for Eighth Amendment purposes. The court found that jail personnel were not subjectively aware that the inmate posed a high risk of suicide and there was not a pattern of suicides that led to the inference that the county was aware that policies for treating mentally ill inmates were inadequate and chose to do nothing. (Wood County Jail, Wisconsin)

U.S. Appeals Court
SUICIDE

Frake v. City of Chicago, 210 F.3d 779 (7th Cir. 2000). The administrator for the estate of a pretrial detainee who committed suicide in a police lockup sued the city in state court and under § 1983. After removing the action the city moved for summary judgment, which the district court granted. The appeals court affirmed, finding that the city was not deliberately indifferent to the welfare of pretrial detainees. According to the court, even though the city continued to place detainees in cells containing horizontal metal bars despite past suicides by detainees using the bars, there was no evidence that anyone had knowledge that this detainee was suicidal. The court noted that the facility used a thorough screening process and took precautions to protect detainees from the risk of suicide, facility personnel received suicide awareness training, cells were checked every fifteen minutes--which "far exceeds" the hourly checks required in state municipal jail standards, dangerous items were removed the detainees' possession, and cell construction was authorized by state standards. (District 12 Chicago Police Department lockup)

U.S. District Court
SUICIDE ATTEMPT

Garcia v. City of Boston, 115 F.Supp.2d 74 (D.Mass. 2000). A pretrial detainee brought an action against a city, a hospital and the hospital's emergency psychiatric services program, alleging excessive force and denial of medical and psychological care. The district court granted summary judgment for the defendants. The detainee had been arrested by the city police following a domestic disturbance and was taken to a police station where he was booked and placed in a cell. That evening the detainee made an apparent attempt to commit suicide by cutting his left wrist with the aluminum top of a juice container that had been given to him with his dinner. An ambulance was summoned but the detainee refused treatment. He was placed on the suicide list at the station and handcuffed to a bar on the wall in the booking area, where he could be closely monitored. The following evening the detainee again attempted to commit suicide when he obtained a book of matches and set fire to his own clothing while still handcuffed to the bar. He sustained burns and was taken to a hospital. Hospital personnel explored various mental health alternatives for the detainee but he was eventually returned to the police station and handcuffed to the bar, where he lit his shirt on fire fifteen minutes after returning from the hospital. The detainee's clothes were taken away and he remained in the booking area. Later that day the detainee pulled an officer's gun out of its holster, shot the officer and another prisoner, and was then shot by another officer. The district court held that the officials and hospital staff were not negligent in their failure to place the detainee in a state mental facility since the detainee was not eligible for placement while charges were pending. The court also held that firing of a gun at the detainee was not an excessive use of force because there was a clear need for the use of force, only one round was fired, and the detainee sustained only a limited injury. (Boston Police Department, Area B, District 2 Police Station, Massachusetts)

U.S. Appeals Court
PRISONER SUICIDE

Gregoire v. Class, 236 F.3d 413 (8th Cir. 2000). The estate of a state prisoner who committed suicide brought a § 1983 action against prison officials. The district court denied summary judgment for the prisoner's case manager and the case manager appealed. The appeals court reversed and remanded, finding that the case manager was not deliberately indifferent to the prisoner's suicide risk in violation of the Eighth Amendment, and was therefore entitled to qualified immunity. The prisoner's ex-wife had called the case manager and told him that the prisoner planned to commit suicide, but the case manager waited longer than a half hour to check

on the prisoner following the telephone call. The ex-wife had asked the case manager to check on the prisoner and to reassure the prisoner that she would not prevent him from seeing his daughters. But the ex-wife failed to tell the case manager that the prisoner had made previous suicide threats and had been treated for depression, and that he had allegedly attempted suicide in the past. Following the ex-wife's phone call, the case manager checked the prisoner's file to ensure that he was not prevented from seeing his daughters due to a court order, and during that time several other prisoners came to see the case manager. Eventually the case manager had the prisoner paged and instructed to report to his office, at which time the prisoner's cell mate found that he had hung himself. The appeals court held that the case manager was not deliberately indifferent to the serious medical needs of the prisoner because the only indication of the prisoner's suicide risk was the ex-wife's telephone call. (South Dakota State Penitentiary)

U.S. Appeals Court
PRISONER SUICIDE

Jacobs v. West Feliciana Sheriff's Dept., 228 F.3d 388 (5th Cir. 2000). Survivors of an arrestee who had committed suicide brought a § 1983 action against a sheriff's department and against the sheriff and deputies. The district court denied individual defendants' motions to dismiss on the ground of qualified immunity and they appealed. The appeals court affirmed in part, reversed in part, and remanded the case. The appeals court held that the sheriff and senior deputy, who knew of a prior suicide under similar circumstances, could have been found to have acted with deliberate indifference to the arrestee's known suicidal tendencies, but that a newly-hired deputy who only followed orders which were not facially outrageous, was entitled to qualified immunity. The arrestee had been placed in a cell that had a significant blind spot and tie off points, and was provided with a blanket and towel even though a prior detainee had hanged himself in the same cell under similar circumstances. The female arrestee had been brought to the local jail by state troopers who informed jail employees that she had tried to kill herself when she was apprehended. She was placed in a "detox" cell which is used to house inmates who are intoxicated, who need to be isolated for security reasons, or who are designated for placement on a suicide watch. The arrestee was placed on a suicide watch, but the cell could be completely observed only if an officer viewed it from an adjacent hallway. The following evening the arrestee was discovered hanging from a light fixture in the cell, having not been observed by jail staff for as many as 45 minutes prior to being discovered. (West Feliciana Parish Prison, Louisiana)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

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 Co. Corr'l. Center, Tennessee)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Pearson v. Vaughn, 102 F.Supp.2d 282 (E.D.Pa. 2000). A prisoner brought a § 1983 action alleging that prison officials failed to protect him against attacks from other inmates, in violation of his Eighth Amendment rights. The district court denied summary judgment for some of the officials on the merits, or on the basis of qualified immunity. But the court found that genuine issues of material fact existed as to whether the prisoner, who suffered a serious assault when he was housed in the general population, faced a substantial risk of serious harm and whether a prison official was deliberately indifferent to the prisoner's safety. (State Correctional Institution at Graterford, Pennsylvania)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

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

U.S. District Court
PRISONER SUICIDE
JUVENILES

Richards v. Southeast Alabama Youth Ser. Diversion, 105 F.Supp.2d 1268 (M.D.Ala. 2000). The mother of a detainee who had committed suicide while in custody brought a civil rights action against city and county officials. The district court denied Eleventh Amendment immunity to the

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

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Roy v. Johnson, 97 F.Supp.2d 1102 (S.D.Ala. 2000). A prison inmate who had been beaten by other inmates sued a corrections officer, supervisor and warden under § 1983. The district court entered judgment for the defendants, finding that the inmate had not been placed in a substantial risk of harm by being housed with the group of inmates that beat him. The court found that the inmate's allegation that an officer was negligently absent from his post was insufficient to establish a deliberate indifference Eighth Amendment violation. The court noted that the inmate did not inform officers that he was in trouble with the group of inmates for failure to repay a loan of cigarettes. (Fountain Correctional Facility, Alabama)

U.S. District Court
OFFICER ON
PRISONER ASSAULT

Santiago v. C.O. Campisi Shield #4592, 91 F.Supp.2d 665 (S.D.N.Y. 2000). A pretrial detainee brought a § 1983 action against a city corrections department alleging that an officer assaulted him in his cell. The district court granted summary judgment for the defendants, finding that a corrections officer's alleged open-handed slap of the detainee after an altercation was de minimis where the detainee suffered no physical injury. The court found that the slap was not sufficiently repugnant to the conscience of mankind to constitute a due process violation. (Bronx County Courthouse, New York)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

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. Appeals Court
SUICIDE

Sterling v. Borough of Minersville, 232 F.3d 190 (3rd Cir. 2000). The executrix for the estate of an arrestee who committed suicide after an officer threatened to disclose his suspected sexual orientation brought a § 1983 action asserting violations of the arrestee's rights to privacy and equal protection rights. The district court denied qualified immunity for some of the defendants and they appealed. The appeals court affirmed, finding that an officer's threat to disclose the arrestee's suspected homosexuality violated the arrestee's constitutional right to privacy and that the officer and a fellow officer were not entitled to qualified immunity. The arrestee had committed suicide after his release from custody. (City of Minersville Police Department, Pennsylvania)

U.S. District Court
SUICIDE ATTEMPT

Stewart v. Robinson, 115 F.Supp.2d 188 (D.N.H. 2000). The guardian of a pretrial detainee brought a civil rights action against police and county officials to recover for injuries sustained by the detainee as the result of a suicide attempt that left the detainee in a vegetative state. The district court granted summary judgment for the defendants, finding that neither the police department nor the county could be held liable for the suicide attempt. The suicide attempt occurred four days after the detainee was transferred from the police department's custody to the jail. Although police officers were possibly negligent by failing to complete an available intake form, the court found that the department could not be held liable. The court held that the record did not suggest that jail officials or the county were aware that the detainee posed a suicide risk or that they should have known that jail cells posed an unreasonable danger to potentially suicidal inmates. The court noted that police officials apparently failed to inform county jail officials of the detainee's previous suicidal statements when he was transferred to the jail. The detainee attempted to hang himself with a sheet tied around one of the supports of the upper bunk in his cell, but was discovered approximately five minutes later and survived. (Carroll County House of Corrections and Conway Police Department, New Hampshire)

U.S. Appeals Court
MEDICAL CARE

Taylor v. Adams, 221 F.3d 1254 (11th Cir. 2000). In an action arising from the death of a pretrial detainee, the district court denied summary judgment to three firemedics and a jail nurse and they appealed. The appeals court reversed and remanded. The appeals court held that the

firemedics were not deliberately indifferent because they acted on whatever knowledge they had of the detainee's condition and tried to check him out and administer aid, questioned him repeatedly regarding his desire for treatment but the detainee declined treatment. (Mobile County Jail, Alabama)

U.S. District Court
PRISONER SUICIDE

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. District Court
THREATS

Warren v. Westchester County Jail, 106 F.Supp.2d 559 (S.D.N.Y. 2000). An inmate brought a § 1983 action against a county jail, administrators and officers, alleging Eighth Amendment violations. The district granted summary judgment for the defendants, holding that a jail officer who fought with the inmate had not employed excessive force when he grabbed the inmate in a bear hug in a good faith effort to restore order, even though the inmate claimed that the officer took advantage of the situation to administer additional blows. The court also held that verbal abuse, which the inmate had alleged he was subjected to, did not rise to the level of a constitutional violation that was actionable under § 1983. (Westchester County Jail, New York)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Weiss v. Cooley, 230 F.3d 1027 (7th Cir. 2000). A suspect in a highly publicized rape case, who had been assaulted by fellow inmates while detained in a county jail, brought a § 1983 action against the sheriff, jail commander and a jail officer. The district court dismissed the claims against the sheriff and jail commander and granted summary judgment for the officer. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that summary judgment for the officer was precluded by a fact issue as to whether the officer had actual knowledge that the suspect faced an objective risk of danger. Affirming the dismissal of the sheriff and jail commander from the action, the appeals court noted that allegations that circumstances were such that assaults on prisoners like the suspect were inevitable, and that the system used to classify inmates for housing safety purposes were inadequate, were insufficient to provide adequate notice to the sheriff and commander in order to sustain an Eighth Amendment claim against them. Upon admission to the jail, the suspect had been asked if he had any enemies in the jail, if he needed any special care, or if he had ever assaulted anyone or was contemplating assaulting anyone, and the suspect answered "no" to each of these questions. (Morgan County Jail, Indiana)

U.S. Appeals Court
SUICIDE

Williams v. Kelso, 201 F.3d 1060 (8th Cir. 2000). The executor of the estate of a jail inmate who committed suicide while in custody sued jail employees under § 1983. The district court dismissed state law claims against health care providers but denied summary judgment for the defendants on certain claims. The appeals court affirmed the grant of summary judgment and reversed the denial of summary judgment on the remaining claims. The appeals court found that even though a psychologist had instructed jailers to check the inmate's vital signs every four to six hours, their failure to follow this instruction over a period of about seven hours was a matter of negligence, at most, and did not show deliberate indifference. The appeals court also held that there was no requirement under the Eighth Amendment that the jailers provide immediate medical attention to a disoriented, confused, belligerent detainee who had been arrested on an alcohol related misdemeanor charge. The court held that jail supervisors were entitled to qualified immunity on the claim of deliberate indifference in failing to initially segregate the inmate from other inmates upon booking. According to the court, the jail officials gave the inmate his medication, placed him in the misdemeanor section of the jail, regularly observed him, had him examined by a psychologist and psychiatrist, and were in the process of transferring him to a treatment center when his suicide occurred, and the inmate had given no overt indication that he was a suicide risk. The court noted that the plaintiff's expert witness even offered the opinion that persons who exhibited the symptoms that the inmate presented do not generally harm themselves. (Faulkner County Detention Facility, Arkansas)

U.S. Appeals Court
PRISONER SUICIDE

Yellow Horse v. Pennington County, 225 F.3d 923 (8th Cir. 2000). The administrator for the estate of an inmate who hanged himself in a county jail brought a § 1983 action against a county, correctional officer and deputy sheriff. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the corrections officer who removed the inmate from a suicide watch was entitled to qualified immunity because she followed the routine practice for removing an inmate from a suicide watch, which included reviewing the contact journal for information on the inmate's eating, sleeping and social habits, and interviewing and evaluating the inmate. The appeals court found that the officer on duty at the time of the suicide was not deliberately indifferent to the risk of suicide when she failed to make more timely cell checks, despite learning from other prisoners that the inmate was upset and talking about heaven and hell. According to the court, the county's suicide prevention policy did not show deliberate indifference to the rights of others because it included inmate screening, officer training, and annual policy review and was reasonable and comprised an effort to prevent suicide. (Pennington County Jail, South Dakota)

2001

U.S. Appeals Court
THREATS
PROTECTION FROM
HARM

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

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Benner v. McAdory, 165 F.Supp.2d 773 (N.D.Ill. 2001). A state prison inmate brought a § 1983 action against corrections officials and officers, alleging they were deliberately indifferent to his safety and permitted a fellow inmate to assault him. The district court granted summary judgment in favor of the defendants. The court held that the superintendent's failure to move the inmate out of a unit that housed a member of a gang that the inmate had identified as wanting to kill him, did not amount to deliberate indifference and was, at most, negligence. The court found that the fact that the inmate had chosen to approach the fellow inmate's cell precluded recovery because the proximate cause of the inmate's assault was the inmate's own actions. The inmate was scalded with hot water when he approached the fellow inmate's cell, without an escort, to retrieve his legal papers. (Stateville Correctional Facility, Joliet, Illinois)

U.S. Appeals Court
SUICIDE

Boncher ex rel. Boncher v. Brown County, 272 F.3d 484 (7th Cir. 2001). The estate of a prisoner who had committed suicide brought a § 1983 action against jail officials alleging deliberate indifference to the risk of the prisoner's suicide. The district court granted summary judgment for the jail officials and the appeals court affirmed. The appeals court held that evidence was insufficient that jail officials were deliberately indifferent, even though intake officers had little training and relied on a checklist that was deficient in several areas. The court noted that the officers were making a judgment that was not likely to be assisted by special training and that the jail was in compliance with the state's minimum standards for suicide prevention. The prisoner had been arrested after a domestic altercation, and had a long history of alcoholism and had attempted suicide at least three times, but this history was not known to the arresting officers or the personnel of the jail. The prisoner was joking with officers during his admission to the jail and the officers thought him to be a "happy drunk." He was placed in a regular cell instead of the jail's suicide-watch cell, and he died within 45 minutes by hanging himself with a bedsheet. 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. District Court
SUICIDE

Bowens v. City of Atmore, 171 F.Supp.2d 1244 (S.D.Ala. 2001). Survivors of a prisoner who committed suicide filed a § 1983 action alleging a conspiracy to violate the prisoner's constitutional rights. The district court granted summary judgment in favor of the defendants. The court found that a police dispatcher could not be held liable to the survivors, even if the dispatcher knew of the victim's alleged suicide attempt a month earlier, drug abuse and other stressors. The court noted that the victim did not exhibit a strong likelihood that she would commit suicide on the day she took her life. The victim had been convicted in municipal court of several misdemeanors and was sentenced to 120 days in a city jail. She committed suicide approximately 24 hours after admission to the jail. (City of Atmore, Alabama)

U.S. Appeals Court
SUICIDE

Brown v. Harris, 240 F.3d 383 (4th Cir. 2001). The father of a detainee who committed suicide in a jail brought state tort claims and § 1983 claims against county officials. The district court granted judgment as a matter of law to the defendants and the father appealed. The appeals court affirmed. The appeals court held that the adult detainee committed common law suicide under Virginia law, precluding the estate of the detainee from recovering on wrongful death and gross negligence claims. The court found that even if the jail supervisor was informed that the detainee

was suicidal, he did not act with deliberate indifference to the detainee's medical needs because he placed the detainee on "medical watch" which established constant video surveillance of the detainee's cell. The court noted that although the supervisor failed to place the detainee in a paper gown or have him examined by medical staff, his failure amounted to, at most, negligence, not deliberate indifference. (Virginia Beach General Jail, Virginia)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Canell v. Multnomah County, 141 F.Supp.2d 1046 (D.Or. 2001). An inmate brought a § 1983 action alleging that his conditions of confinement in a county jail violated his constitutional rights. The district court granted summary judgment for the defendants. The district court held that the inmate did not suffer a constitutionally significant injury, sufficient to support a § 1983 action under the Prison Litigation Reform Act (PLRA), as the result of jail officials' failure to shower and "debug" inmates or test them for communicable diseases before double bunking them and mixing them with the general population. The inmate's alleged injuries consisted of toe fungus, occasional constipation, brief denials of food, sanitation, and water, nose sores, and cold winter temperatures. According to the court, the inmate's fear that his cellmates might attack him did not support a § 1983 action even if he was actually attacked once, because the attack did not require him to seek medical attention. (Multnomah County Jails, Oregon)

U.S. District Court
OFFICER ON
PRISONER ASSAULT
SEXUAL ASSAULT

Colman v. Vasquez, 142 F.Supp.2d 226 (D.Conn. 2001). A female inmate placed in a special prison unit for victims of sexual abuse filed a § 1983 action against prison officials alleging that she was sexually abused by a male guard, and challenging the practice of having male guards conduct pat searches of female inmates. The district court denied the defendants' motions to dismiss, finding that fact issues remained. The court found that a male prison guard's repeated, involuntary, harassing and intimidating contact with a female inmate can constitute a substantial risk of harm under the Eighth Amendment, and that prison officials were required to investigate the female inmate's complaint that she had been sexually assaulted. (Federal Corr'l Inst., Danbury, Conn.)

U.S. Appeals Court
PRISONER SUICIDE

Comstock v. McCrary, 273 F.3d 693 (6th Cir. 2001). The personal representative of a prisoner's estate brought a civil rights action against prison medical personnel after the prisoner committed suicide while confined. The district court denied summary judgment for the defendants based on qualified immunity and the appeals court affirmed in part and reversed in part. The appeals court held that evidence was sufficient to establish that a prison psychologist subjectively perceived, and was deliberately indifferent to, the risk that the prisoner might commit suicide. The psychologist had released the prisoner from a suicide watch without making any reasoned assessment or evaluation of the prisoner's suicide risk at the time of release, despite concluding that the prisoner was sufficiently at risk to put him on suicide watch only one day before. The psychologist also admitted that he suspected that other inmates had targeted the prisoner as a snitch, a characterization that he knew was very perilous for the prisoner. (Reception and Guidance Center at the State Prison of Southern Michigan)

U.S. Appeals Court
PROTECTION FROM
HARM
PRISONER ON
PRISONER ASSAULT

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

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

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
SUICIDE

Domino v. Texas Dept. of Criminal Justice, 239 F.3d 752 (5th Cir. 2001). A prison psychiatrist appealed the decision of a federal district court that denied his motion for summary judgment based on qualified immunity. The appeals court reversed and remanded, finding that the psychiatrist's incorrect diagnosis that a prisoner's suicide threat was not genuine, but was made to obtain secondary gain, did not amount to deliberate indifference. (Coffield Unit, Texas Dept. Crim. Just.)

- U.S. District Court
SEXUAL ASSAULT
- Dorsey v. Givens, 209 F.Supp.2d 850 (N.D.Ill. 2001). A former county jail inmate brought an action against a correctional officer, detention facility, and county sheriff, alleging she had been subjected to improper sexual touching by the officer. The district court held that the officer's alleged sexual misconduct was not within the scope of his employment, and he was therefore not entitled to indemnification from the sheriff. The court noted that sexual misconduct involving a prisoner is both a violation of work rules and a crime. The officer was terminated and was eventually convicted of five counts of Custodial Sexual Misconduct, none of which involved the plaintiff. (Will County Detention Center, Illinois)
- U.S. District Court
SUICIDE
- Ellis ex rel. Lanthorn v. Jamerson, 174 F.Supp.2d 747 (E.D.Tenn. 2001). The mother and the minor child of a pretrial detainee who committed suicide in jail brought a § 1983 action against county jail officials. The district court dismissed the case, finding that the county jailor who was on duty at the time of the detainee's suicide was entitled to qualified immunity. The plaintiffs attempted to introduce evidence that the jailor was watching video surveillance monitors and saw the detainee fashion a noose and place it around his neck but did not summon help immediately. The court refused to allow a statement made by the county sheriff to the media to be used as evidence, even though it might support the assertion that jail staff did not act expediently to prevent the detainee's death. (Washington County Jail, Tennessee)
- U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
- Flint ex rel. Flint v. KY Dept. of Corrections, 270 F.3d 340 (6th Cir. 2001). The estate of a prisoner who had been murdered in prison filed a § 1983 action against state corrections officials. The district court denied the defendants' motion for summary judgment on the basis of qualified immunity and the appeals court affirmed. The appeals court held that the murder of the prisoner was "sufficiently serious" to constitute a violation of the Eighth Amendment, that officials were deliberately indifferent to threats to the prisoner, and that officials acted unreasonably in taking no action to protect the prisoner. The prisoner worked in the prison print shop, which was managed by a former prisoner who had what was characterized as a "close relationship" with several inmates, allowing them to make telephone calls in violation of prison rules. The prisoner reported this situation and this angered other prisoners and the manager, resulting in threats against the prisoner's life. Prison officials were aware of these threats. The shop was left unsupervised one day by prison staff and another inmate took a hammer from the shop tool room and bludgeoned the prisoner to death. (Lockett Correctional Complex, Kentucky)
- U.S. District Court
OFFICER ON
PRISONER ASSAULT
- Gailor v. Armstrong, 187 F.Supp.2d 729 (W.D.Ky. 2001). The estate of a deceased pretrial detainee brought a § 1983 action against a county and correctional officers for the beating death of the detainee by officers. The district granted summary judgment in favor of the county, finding that there was insufficient evidence to hold the county liable, but denied summary judgment for the officers. The court held that fact issues remained as to whether the officers' use of force was excessive. The court ruled that the officers and their supervisor were not entitled to qualified immunity. The court held that the county was not liable under § 1983 because evidence that the officers failed to follow the county's use of force policy, officials allegedly falsified reports, and evidence that some officers received only limited use of force training, did not demonstrate custom or usage necessary to support a § 1983 claim. The court denied summary judgment for a supervisor who allegedly failed to intervene when she saw excessive force being used against the detainee. (Jefferson County Department of Corrections, Kentucky)
- U.S. District Court
SEXUAL ASSAULT
- Goode v. Correctional Medical Services, 168 F.Supp.2d 289 (D.Del. 2001). An inmate sued various prison officials, a third party medical contractor, and the contractor's nursing employees alleging excessive force, sexual assault and Eighth Amendment violations in connection with an obstetric examination. The district court held that the inmate had sufficiently exhausted administrative remedies, the third-party medical contractor had no civil rights liability on the basis of respondeat superior, and the inmate stated an Eighth Amendment claim against the employees. The employees allegedly hugged and kissed the inmate during the examination, and conducted an unauthorized internal examination. The incident allegedly caused the inmate light bleeding, caused her blood pressure to rise, and caused her to go into labor four weeks early. (Baylor Women's Correctional Facility, Delaware)
- U.S. District Court
WRONGFUL DEATH
- Gonzales Rodriguez v. Alvarado, 134 F.Supp.2d 451 (D.Puerto Rico 2001). A deceased inmate's family brought an action under § 1983, the Emergency Medical Treatment and Active Labor Act, and Puerto Rico's civil code. The district court held that only the deceased inmate's son had standing in his capacity as his personal representative to bring a § 1983. According to the court, his son and legal heir had standing to recover for damages for pain the deceased inmate suffered. (Puerto Rico Corrections Department)
- U.S. District Court
OFFICER ON
PRISONER ASSAULT
- Hedrick v. Roberts, 183 F.Supp.2d 814 (E.D.Va. 2001). Pretrial detainees who were assaulted and injured by other inmates brought separate actions in state court against a sheriff. The cases were consolidated. The district court granted summary judgment in favor of the sheriff. The court held that the detainees were exposed to a substantial risk of harm in violation of the Eighth and Fourteenth Amendments, but that the sheriff was not deliberately indifferent and was entitled to qualified immunity. The court noted that the sheriff took immediate and reasonable measures to alleviate problems associated with the overcrowded jail and provided medical treatment to

detainees who were injured. (Hampton Jail, Virginia)

U.S. District Court
SUICIDE

Holland v. City of Atmore, 168 F.Supp.2d 1303 (S.D.Ala. 2001). Survivors of an inmate who committed suicide during his period of pretrial confinement filed a § 1983 action. The district court granted summary judgment in favor of the defendants. The court held that jail staff did not have a duty to take any precautions to prevent his suicide, where the inmate had not shown a strong likelihood of taking his life. The inmate had been admitted to the city jail after being arrested for driving under the influence and other offenses. He was booked into the facility and locked down. Within thirty minutes he was found dead or dying in his cell, having used his shoelaces to hang himself. The plaintiffs had argued that the inmate had previously attempted to take his own life and that city police knew about these attempts. (Atmore City Jail, Alabama)

U.S. Appeals Court
RIOT

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

U.S. District Court
OFFICER ON
PRISONER ASSAULT
USE OF FORCE

Lewis v. Board of Sedgwick County Com'rs., 140 F.Supp.2d 1125 (D.Kan. 2001). A detainee brought a federal civil rights suit against a county alleging that jail officers used excessive force against him. A jury returned a verdict of \$500,000 in favor of the inmate and the county asked for a new trial or for judgment as a matter of law. The district court granted judgment as a matter of law, finding that evidence was insufficient to show that the county had been deliberately indifferent to the use of excessive force against detainees at the county detention facility. According to the court, the size of the damage award suggested that the jury was excessively or improperly motivated by its desire to punish the county. The court held that the county was not deliberately indifferent to the rights of the detainee because it provided training designed to prevent the use of excessive force at both a training academy and on-the-job, and had established a use-of-force policy of which its detention officers were aware. The court found that it was not a "glaring omission" to fail to instruct detention officers during training that they were prohibited from standing on a detainee's back in an effort to restrain a person. The court held that it was not deliberate indifference by the county to state in county training manuals that it was permissible to use pressure point tactics when inmates were being placed in a restraint chair, where the manuals cautioned that the tactics were to be used with the minimal amount of force necessary to gain compliance. The court noted that the county had encountered only 22 complaints of excessive force in its jail from approximately 90,000 detainees who went through the facility. (Sedgwick County Adult Detention Facility, Kansas)

U.S. Appeals Court
RIOT
PRISONER ON
PRISONER ASSAULT

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

U.S. District Court
SUICIDE

Naumoff v. Old, 167 F.Supp.2d 1250 (D.Kan. 2001). A mother whose son had committed suicide while confined in a jail brought a § 1983 action against a county sheriff. The sheriff moved for summary judgment and the court granted the motion, finding that the mother failed to allege an injury to her own constitutional rights. The court held that the mother lacked standing to bring the § 1983 action because she brought the action in her individual capacity rather than as representative of her son's estate. The mother did not make a claim for deprivation of familial association or otherwise allege injury to her own constitutional rights. (Wabaunsee Co. Jail, Kansas)

U.S. District Court
SEXUAL ASSAULT

Paz v. Weir, 137 F.Supp.2d 782 (S.D.Tex. 2001). A female jail inmate brought an action against a county under § 1983 and other federal and state laws for violations of her rights resulting from an alleged sexual assault by the jail's chaplain. The district court found genuine issues of material fact existed regarding the inmate's § 1983 claims against the county arising out of alleged unconstitutional invasions of her right to bodily integrity and retaliation for the exercise of her right to free speech. The court also found that issues of material fact existed as to whether the jail chaplain coerced the female inmate or used his position to prevail upon her to engage in repeated sexual acts, while assuring her that God would forgive her actions. (Harris County Jail, Texas)

- U.S. District Court
OFFICER ON
PRISONER ASSAULT
- Piedra v. True, 169 F.Supp.2d 1239 (D.Kan. 2001). A federal prisoner brought an action alleging that assaults by prison officers violated his constitutional rights. The district court granted summary judgment in favor of the officers, finding that they were entitled to qualified immunity for beating the prisoner while he was handcuffed. According to the court, it was not clearly established at the time that guards could not use force on a combative prisoner who was handcuffed. The court noted that medical records did not support the prisoner's claim that he was repeatedly beaten. According to the court, the prisoner swung a telephone, kicked, spat and verbally assaulted the officers. (United States Penitentiary, Leavenworth, Kansas)
- U.S. District Court
PROTECTION FROM
HARM
- Ramsey v. Schauble, 141 F.Supp.2d 584 (W.D.N.C. 2001). A former detainee whose finger tip was severed after a sheriff's deputy allegedly shut a cell window on it, brought a pro se complaint against the deputy and the sheriff. The district court held that the detainee stated a cognizable civil rights complaint against the sheriff, and the detainee pled a cause of action under a state law that provided that a keeper of a jail must pay treble damages if he/she does any wrong or injury to a detainee, and is guilty of a Class 1 misdemeanor. The court found that jail officials ignored the detainee's cries for help after he was injured by the deputy and displayed deliberate indifference to his need for quick medical attention to preserve the possibility of reattaching the finger. The detainee was released from custody several hours after he was returned from the hospital, but officials refused to give the detainee pain medication prescribed by the hospital, requiring him to return to the jail periodically over the next several days to receive each pill individually. (Watauga County Law Enforcement Center, North Carolina)
- U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
- 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 violence would result from placing inmates of different racial back-grounds 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
PRISONER ON
PRISONER ASSAULT
- Rodriguez v. Connecticut, 169 F.Supp.2d 39 (D.Conn. 2001). The mother of an inmate who had been killed by his cellmate brought an action seeking damages. The district court found that the commissioner of corrections and a facility warden were personally involved in the placement of the inmate in a cell with a rival gang member, even though they were not personally responsible for cell assignment. The court also held that issues of material fact precluded summary judgment for correctional officers. The officers were allegedly watching television at the time of the attack and could not hear any fights, leaving inmates unsupervised, and allegedly delayed calling for medical attention so they could put the television away. (Garner Corr'l. Institution, Connecticut)
- U.S. District Court
OFFICER ON
PRISONER ASSAULT
- Romaine v. Rawson, 140 F.Supp.2d 204 (N.D.N.Y. 2001). A state prison inmate brought a § 1983 action against a prison guard, alleging Eighth and Fourteenth Amendment violations resulting from an assault on the inmate. The district court ruled that the guard's actions were wanton and malicious, and were objectively unreasonable even though the inmate's injuries were de minimis. The court denied the guard qualified immunity and awarded the inmate \$1,000 in compensatory damages and \$500 in punitive damages. The court found that the guard struck the inmate three times across the face even though the guard admitted that there was no need to use force against the inmate, and he did not temper his response by utilizing non-forcible means available to him. (Mt. McGregor Correctional Facility, New York)
- U.S. Appeals Court
SUICIDE
- Sanville v. McCaughtry, 266 F.3d 724 (7th Cir. 2001). The mother of a mentally ill inmate who committed suicide while incarcerated in a state prison brought an action against prison physicians, wardens and officers. The district court dismissed the case and the appeals court affirmed in part, and reversed and remanded in part. The appeals court held that the allegations stated a claim that the officers were aware of a substantial risk of harm that the inmate would commit suicide and failed to take reasonable steps to prevent the inmate's suicide. According to the appeals court, the officers were not entitled to qualified immunity on the § 1983 individual liability claims. The mother alleged that the inmate had recently lost nearly one-third of his body weight, had written letters to her contemplating his death, had written a last will and testament, had told officers that he planned to commit suicide, and had covered his cell openings with toilet paper so that it was difficult to see inside. The mother also alleged that the inmate was last seen alive by officers at 10:00 a.m. and that in the following five hours before his suicide was discovered his cell window was covered with toilet paper, there was no apparent attempt to determine if the inmate was stable. (Waupun Correctional Institution, Wisconsin)
- U.S. District Court
PRISONER ON
PRISONER ASSAULT
- Swan v. U.S., 159 F.Supp.2d 1174 (N.D.Cal. 2001). A federal prison inmate brought an action against the United States and a prison staff psychologist alleging they failed to prevent an attack by another inmate, in violation of his Eighth Amendment rights. The district court granted

summary judgment for the defendants. The court held that the psychologist did not act with deliberate indifference to the inmate's safety and was under no legal duty to disclose the inmate's confidential communications regarding a possible risk of harm from other inmates, or to pursue, on the inmate's behalf, protection that would have required disclosure of the inmate's counseling session statements. The inmate claimed that he provided information to the psychologist prior to the attack, who should have acted to prevent it. (Federal Corrections Institute, Dublin, California)

U.S. Appeals Court
PROTECTION FROM
HARM
MEDICAL CARE

Thompson v. Upshur County, TX, 245 F.3d 447 (5th Cir. 2001). Parents whose son had died of medical conditions associated with his delirium tremens while he was a pretrial detainee in a county jail, sued under § 1983. The district court denied the defendants' motion for summary judgment on qualified immunity grounds and the defendants appealed. The appeals court affirmed in part and reversed in part. The appeals court held that the sheriff of the jail to which the detainee was first admitted was entitled to qualified immunity in connection with the death of the detainee, which occurred following his transfer to another county jail that had the detoxification facilities that his jail lacked. The sheriff of the jail in the receiving county did not violate any clearly established right in failing to instruct his staff on the potentially life-threatening nature of medical conditions associated with delirium tremens and was entitled to qualified immunity, according to the appeals court. But the appeals court found that a sergeant at the jail in which the detainee died was not entitled to qualified immunity because of fact questions as to whether she had instructed her subordinates not to disturb her at home unless a detainee was on the verge of death, or whether she had otherwise interfered with the detainee's receipt of medical care. (Upshur County Jail and Marion County Jail, Texas)

U.S. Appeals Court
PROTECTION FROM
HARM

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

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Tobias v. Campbell, 202 F.Supp.2d 934 (E.D.Mo. 2001). An inmate filed a § 1983 action claiming that county correctional officers failed to protect him from an assault by fellow inmates, in violation of his constitutional rights. The district court entered judgment in favor of the officers, finding that they were not deliberately indifferent to the risk of assault, even though the inmate had informed them that his cellmate was in danger. The court noted that the inmate did not tell the officers that he was also in danger. (Marion County Jail and Law Enforcement Center, Missouri)

U.S. Appeals Court
PROTECTION FROM
HARM

Watkins v. City of Battle Creek, 273 F.3d 682 (6th Cir. 2001). The personal representative of the estate of a prisoner who died in jail custody, after denying that he had ingested cocaine and refusing medical treatment, brought a federal civil rights suit against a city, county and various officials and employees. The district court entered summary judgment for the defendants and the appeals court affirmed. The appeals court held that the arresting officers and jail personnel were not deliberately indifferent to the detainee's rights in violation of the Fourteenth Amendment, and that the detainee was not punished in violation of the Fifth Amendment. The court found that the city and county could not be held liable for failure to train, in the absence of a constitutional violation by individual defendants. According to the court, jail personnel were not deliberately indifferent to the medical needs of the detainee even though he exhibited some behavioral symptoms at the time of intake, where the personnel asked the detainee whether he had swallowed drugs, stated that they would get him medical help if he had and that he would not face additional charges, and generally kept him under observation even though one officer failed to do so. The court noted that detainee repeatedly denied ingesting drugs, refused medical treatment, and offered an alternative explanation for his symptoms. (Battle Creek Police Department, Calhoun County Jail, Michigan)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Wells v. Jefferson County Sheriff Dept., 159 F.Supp.2d 1002 (S.D.Ohio 2001). A former inmate filed a § 1983 action against a county sheriff's department, sheriff and two deputy officers employed at a county jail. The district court granted summary judgment for the defendants. The court found that jail officers were not liable for failing to protect the inmate from another prisoner who had previously attacked him. The officers moved the former inmate to a different cell block upon learning of the history between the inmates, and the former inmate did not allege that he experienced any physical injury as the result of being attacked a second time. The court held that the former inmate's allegations that the single blanket he was allowed in a holding cell was not adequate to keep him warm, and that cockroaches climbed on him while he slept, did not state Eighth Amendment claims where he did not complain to any officers or officials that the cell was uncomfortable or unsanitary. (Jefferson County Jail, Ohio)

U.S. Appeals Court
USE OF FORCE
MEDICAL CARE

Young v. City of Mount Ranier, 238 F.3d 567 (4th Cir. 2001). The parents of a boy who died in custody brought state law negligence and wrongful death claims, and constitutional claims under § 1983, arising from the death of their son. Following removal from state court, the federal district court dismissed the complaint and the parents appealed. The appeals court affirmed in part and

dismissed in part. The appeals court held that the conduct of officers who took the boy into custody for emergency psychiatric evaluation fell within the "middle range of culpability," between gross negligence and intentional misconduct, noting that the boy was owed the same duties owed to a more typical pretrial detainee. The appeals court held that the conduct of the officers fell short of deliberate indifference, as needed to establish § 1983 liability. The boy had resisted when officers tried to take him into custody. The officers used pepper spray to subdue him and then handcuffed him and placed him face down in the back seat of their police car. He was transported to a local hospital where he was found to have no pulse and where efforts to resuscitate him failed. An autopsy revealed that he had PCP in his system. His parents alleged that he died from "positional asphyxiation." (Mount Ranier Police Dept., Maryland)

2002

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

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

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

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
PRISONER ON PRI-
SONER ASSAULT

Boyce v. Moore, 314 F.3d 884 (7th Cir. 2002). A pro se prisoner in a county jail brought a § 1983 action alleging violation of his Eighth Amendment rights by officials who failed to protect him from attacks by fellow prisoners. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that the prisoner failed to establish that jail supervisors were aware of a risk of harm to him. The court also found that the prisoner's transfer to a different tier of the jail, instead of to protective custody, did not evidence deliberate indifference to a risk of harm. (Cook County Department of Corrections, Illinois)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

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
PRISONER ON
PRISONER ASSAULT

Burrell v. Hampshire County, 307 F.3d 1 (1st Cir. 2002). A pretrial detainee who was severely beaten by a fellow detainee brought a § 1983 action against a county and county officials, alleging deliberate indifference to his health and safety in violation of the Fourteenth Amendment. The detainee also alleged an Eighth Amendment violation resulting from failure to segregate violent and nonviolent detainees. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The detainee had told one jail official that he was threatened by a fellow detainee who had a history of assaults, but the officials failed to separate them. The court noted that the plaintiff told one official he had a black belt in martial arts and was a decorated war hero and never requested protective custody. The court found that the county's policy of not screening or segregating potentially violent inmates from non-violent ones did not constitute deliberate indifference to the health and safety of detainees, because inmates

were housed in single cells and were able to lock their cells from the inside at any time. (Hampshire County Jail/House of Corrections, Massachusetts)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
SEXUAL ASSAULT

Butera v. Cottey, 285 F.3d 601 (7th Cir. 2002). A pretrial detainee brought a § 1983 action against a county sheriff after the detainee was sexually assaulted by other detainees. The district court granted summary judgment in favor of the sheriff and the appeals court affirmed. The appeals court held that the detainee was required to show a deliberate action attributable to the sheriff, not just any jail employee. According to the court, the detainee's statements to jail officers that he was having unspecified problems and needed to be moved from his cellblock, and the detainee's mother's telephone call to an unknown jail employee advising that the detainee had been threatened with sexual assault, were not sufficient to give the sheriff actual notice of a specific risk of serious harm. The appeals court also found that violence at the jail was not so prevalent as to put the sheriff on notice of a substantial risk of harm to the detainee. The court noted that the sheriff implemented policies to prevent violence by requiring jail officers to undergo annual training, requiring officers to patrol cellblocks regularly, by allowing detainees to post anonymous complaints, and by separating the most violent detainees from the rest of the population. (Marion County Jail, Indiana)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Calderon-Ortiz v. Laboy-Alvarado, 300 F.3d 60 (1st Cir. 2002). A former pretrial detainee brought a § 1983 action against officials, alleging failure to protect him from other inmates. The district court dismissed the action. The appeals court reversed and remanded, finding that the detainee's complaint sufficiently stated a claim. The detainee alleged he had been forcibly sodomized by other inmates, that officials were aware that inmates were being housed without adequate regard to their custody and security needs, and that staff did not provide adequate supervision. (Bayamon Regional Metropolitan Detention Center, Puerto Rico)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Cantu v. Jones, 293 F.3d 839 (5th Cir. 2002). A prison inmate who had been slashed with a razor by another inmate, brought a civil rights action to recover on a deliberate indifference theory from prison officials, who allegedly orchestrated the assault. A jury ruled in favor of the inmate and awarded \$22,500 in compensatory damages; the prison officials appealed. The appeals court affirmed the district court verdict. The appeals court held that the question of whether officials manifested deliberate indifference to the inmate's safety when they allegedly left a door to another inmate's cell open and allowed him to escape and assault the first inmate, was a matter for the jury. The plaintiff inmate had previously complained about prison guards. The appeals court affirmed that the officials were not entitled to qualified immunity. (Connally Unit, Texas Department of Criminal Justice, Institutional Division)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Case v. Ahitow, 301 F.3d 605 (7th Cir. 2002). A state prison inmate brought an action against corrections officials, alleging failure to protect him from another inmate, in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants. The appeals court reversed and remanded, finding that an issue of fact existed as to whether the behavior of corrections personnel was intentionally or deliberately indifferent. The court noted that the test is whether the officers knew that the inmate faced a serious danger to his safety and if they could have easily averted the danger, yet failed to do so. The court noted that the inmate was "unloved by the guards, both because of frequent disciplinary problems and because he had agreed to testify in a drug case against a guard at a prison." (Illinois River Correctional Center)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043 (9th Cir. 2002). The family and estate of a state prison inmate who was killed by his cellmate brought a § 1983 action against an associate warden and correctional officers. The district court denied summary judgment for the defendants and they appealed. The appeals court reversed, finding that the defendants were entitled to qualified immunity. The court noted that the correctional officers violated the Eighth Amendment to the extent that the officers knew that the inmate was acting out dangerously with his cellmates, or that he was a threat to another inmate. The cellmate had been under observation for two weeks after an incident with a different cellmate, had been returned on medications and was not found to be in need of single-celling. (California Medical Facility-Vacaville)

U.S. District Court
PRISONER SUICIDE

Estate of Sisk v. Manzanares, 262 F.Supp.2d 1162 (D.Kan. 2002). The estate and survivors of a deceased prisoner brought a civil rights action against a county corrections department, alleging deliberate indifference to the prisoner's medical needs. The district court held that summary judgment was precluded by a fact issue as to whether corrections officers were deliberately indifferent to the substantial risk that the inmate would commit suicide. The court held that the corrections officers were not entitled to qualified immunity because they had a clearly established affirmative duty under the Eighth Amendment at the time of the prisoner's suicide, to take reasonable measures to abate a known risk that the prisoner was suicidal. The court held that a supervisor was not deliberately indifferent, noting that the mere fact that a supervisor was not integrally involved with the day to day activities of his subordinates did not mean that he was deliberately indifferent to the need to provide adequate medical care to a suicidal inmate, even though the supervisor was subjectively aware of the prisoner's suicidal state. The supervisor was not aware that a corrections officer had ordered the prisoner to be given a regular blanket and placed in a hard lockdown cell, rather than a "rubber room," and the supervisor was not aware

that the officer was not conducting required periodic checks. The court found that the comments of a captain did not indicate that he was deliberately indifferent to the risk that the prisoner would attempt to commit suicide. The captain allegedly said that suicide blankets "were too expensive" to order, that it would have been "just one less inmate we'd have to worry about," and that he would have to spend money to order those blankets "because one stupid mother fucker had been successful in suicide." The prisoner had asphyxiated himself with a wool blanket. (Shawnee County Department of Corrections, Kansas)

U.S. District Court
OFFICER ON
PRISONER ASSAULT

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
OFFICER ON
PRISONER ASSAULT
SEXUAL ASSAULT

Ford v. County of Oakland, 35 Fed.Appx. 393 (6th Cir. 2002). A female county jail inmate brought a § 1983 action against a county for allegedly maintaining a custom or policy of ignoring sexual harassment and assault claims, and creating an atmosphere that facilitated her rape by a police deputy who was supervising her. The district court granted summary judgment as to the § 1983 municipal liability claim, and the appeals court affirmed. Although the deputy was not suspended from duty until after the sheriff's office had completed its investigation, the court noted that the county had a policy against sexual harassment, disciplined the deputy after the results of a state police report became available, and proffered evidence of three other cases in which officers were disciplined for sexual harassment and assault at the county jail. (Oakland County Jail, Michigan)

U.S. District Court
OFFICER ON
PRISONER ASSAULT

Gallardo v. Dicarlo, 203 F.Supp.2d 1160 (C.D.Cal. 2002). A state prisoner brought a § 1983 action against a prison warden alleging Fifth Amendment and state law claims. The district court found that the prisoner stated an Eighth Amendment excessive force claim against the warden and that the warden was not entitled to qualified immunity. The prisoner alleged that the warden encouraged the use of excessive force, and that he sustained physical injuries from officers' use of force on him that required a 31-day hospitalization and resulted in permanent physical injuries. (California State Prison, Chino)

U.S. District Court
PROTECTION FROM
HARM

Gatlin Ex Rel. Gatlin v. Green, 227 F.Supp.2d 1064 (D.Minn. 2002). The estate of a cooperating witness in a murder investigation brought civil rights, civil rights conspiracy, and state law claims against a police officer and city. The witness had been murdered after police released a prisoner's letter that identified the witness. The district court granted the defendants' motion for summary judgment. The court found that there was no clearly established right at the time of the murder, that required police or jail officers to embargo or detain threatening prison mail or to protect cooperating confidential informants from retaliatory violence. The court noted that the officer who released the prisoner's letter repeatedly warned the informant and took steps to help the informant leave the state and to protect him. (Carver County Jail, Minnesota)

U.S. District Court
MEDICAL CARE

Gonzalez v. Cecil County, Maryland, 221 F.Supp.2d 611 (D.Md. 2002). The widow of a pretrial detainee who died while in custody filed a § 1983 action against a county, sheriff, and detention center medical personnel. The district court denied the defendants' motion to dismiss, in part, finding that fact issues remained as to whether the care provided to the detainee amounted to deliberate indifference. The detainee was admitted to a county detention center at approximately 5:00 p.m. Shortly after his admission he identified himself as a heroin user during a standard intake medical screening. He told three nurses employed by the detention center, upon his arrival, that he was likely to undergo acute heroin withdrawal symptoms. The only treatment provided to him at this time was to be placed on twice-daily doses of Clonidine, a blood pressure medication. The detainee allegedly became violently ill and progressed to acute pulmonary distress, disease and pneumonia during the night and during the next day. He complained to the nurses but was only given an over-the-counter stomach remedy, Kaopectate. Two days later he was found in his cell, unresponsive, and was pronounced dead twenty minutes later. His body was taken to a nearby hospital where an autopsy revealed he died from "pneumonia, complicating narcotics abuse." The district court held that the fact that the nurses were acting in conformity with the county's established protocol in treating the inmate did not entitle them to qualified immunity from liability under § 1983. (Cecil County Detention Center, Maryland)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Gulett v. Haines, 229 F.Supp.2d 806 (S.D. Ohio 2002). A pretrial detainee brought an action against a sheriff, corrections officer, and a jail inmate asserting claims under §1981 and §1983. The detainee had been assaulted by other prisoners and alleged that he was not protected from harm and was denied adequate emergency medical care. The district court held that the jail's emergency medical care policy was not unconstitutional on its face because the policy accounted

for any emergency and left medical decisions, subject to an obvious security concern, to a health care staff member. The court denied summary judgment to one corrections officer, finding it was prevented by genuine issues of material fact as to whether the officer knew that other prisoners were likely to assault the detainee and whether he was responsible for preventing an assault. (Montgomery County Jail, Ohio)

U.S. District Court
OFFICER ON PRISON-
ER ASSAULT

Hammond v. Gordon County, 316 F.Supp.2d 1262 (N.D.Ga. 2002). Female former county jail inmates sued county officials and officers, claiming they were subjected to cruel and unusual punishment in violation of the Eighth Amendment. The district court granted summary judgment, in part, for the defendants. The court held that a claim was stated by allegations that a male officer required female inmates to strip and engage in lewd behavior in return for female hygiene items and toiletries, and that the officer was not entitled to qualified immunity. The court denied summary judgment to higher jail officials in connection with a claim that they violated the Eighth Amendment by showing deliberate indifference to officer-inflicted harm of inmates. The court also denied summary judgment and qualified immunity for a deputy jailer who was claimed to have intentionally inflicted emotional harm and assault and battery on female inmates. The court granted qualified immunity to an officer on a claim that he violated the rights of a female inmate by opening the door of her cell and allowing a male inmate to enter, finding that there were no precedents establishing that the conduct was illegal and the opening of the door was not so obviously unlawful that immunity should not apply. According to the court, an inmate stated an Eighth Amendment claim against an officer when she alleged that the officer had sex with her, and the officer was not entitled to qualified immunity. But the court did not find deliberate indifference on the part of an officer who allegedly offered a female inmate cigarettes if she would expose her breasts, noting that the officer could not, under the circumstances, be placed on notice that his conduct was unacceptable. The court granted qualified immunity to a jail administrator and sheriff from a claim that they were deliberately indifferent by not intervening when male officers required female inmates to strip in order to receive toiletries and instigated and participated in sexual activities with inmates, because the jail administrator and sheriff did not violate any clearly established law when they did not intervene. (Gordon County Jail, Georgia)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Iwanski v. Ray, 44 Fed.Appx. 370 (10th Cir. 2002). The estate of a state inmate brought a § 1983 action alleging prison officials violated the inmate's Eighth Amendment rights by failing to protect him from a fellow prisoner. The district court entered judgment in favor of the officials on a jury verdict. The appeals court affirmed, finding that there was sufficient evidence to support the jury's verdict. The inmate was attacked by an intoxicated prisoner who was armed with a steel bunk bed stacking post. The jury determined that prison officials did not violate the inmate's Eighth Amendment rights by failing to protect him, even though the prisoner had a history of assaultive behavior and alcohol abuse, and had engaged in two previous fights on the day of his attack on the inmate. The court noted that the prisoner had not been disciplined for any violent conduct while incarcerated, prison employees had not observed the pre-assault fights, bed posts had not previously been used as weapons, and correctional officers regularly patrolled the building in the minimum security facility where the assault took place. (Northeast Oklahoma Corr'l. Ctr.)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

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 Corr'l Institution, Georgia)

U.S. District Court
PRISONER ON
PRISONER ASSAULT
SEXUAL ASSAULT
PLRA-Prison Litigation
Reform Act

Kemner v. Hemphill, 199 F.Supp.2d 1264 (N.D.Fla. 2002). A state prisoner filed a § 1983 action alleging that prison officials failed to protect him from sexual assault by another inmate. The district court held that the inmate suffered physical injury sufficient to satisfy the Prison Litigation Reform Act's (PLRA) physical injury requirement. The prisoner was forced to perform oral sex on a fellow inmate, was sexually assaulted for two hours, and suffered cuts, bruises and abrasions. The prisoner was so physically ill that he vomited and he was in shock for hours afterwards. The prisoner asserted that he suffered "mental anguish, fright and shock, embarrassment, humiliation and mortification, in addition to psychological injuries that are permanent." The prisoner contended that being "forced to perform oral sex upon another [male] inmate" is "analogous to body cavity searches performed upon inmates by prison officials." The court concluded "surely Congress intended the concept of 'physical injury' in § 1997e(e) to cover such a repugnant use of physical force." The prisoner alleged that he notified prison officials that he was being harassed and threatened by inmates in his dormitory but that they refused to move him from his cell. The court denied the defendant's motion for partial judgment on the pleadings. (Florida)

U.S. Appeals Court
PROTECTION FROM
HARM

Lawrence v. Bowersox, 297 F.3d 727 (8th Cir. 2002). Prisoners brought an action against prison officers alleging violation of their Eighth Amendment rights. The district court granted judgment in favor of the prisoners and the appeals court affirmed in part and remanded in part. The appeals court held that evidence was sufficient for a reasonable jury to conclude that the inmates were incarcerated under conditions that posed an objectively substantial risk of harm, and that an unnecessary pepper spray shower violated the inmates' Eighth Amendment rights because a supervisor orchestrated it even though the inmates were confined and had not disobeyed orders. The appeals court found that it was not an abuse of discretion for the district court to require prison officials to pay discovery sanctions where the inmates were "given the runaround" and were forced to take depositions and file motions that would have been unnecessary if the officials had complied with the district court's discovery order. The district court jury awarded \$10,003 against an officer and the district court awarded discovery sanctions in the amount of \$8,712. (Potosi Correctional Center, Missouri)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Liles v. Camden County Dept. of Corrections, 225 F.Supp.2d 450 (D.N.J. 2002). Former inmates brought an action against county officials alleging that conditions of confinement violated their Eighth Amendment rights. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that summary judgment was precluded by fact issues as to whether fighting that broke out as the result of prisoners urinating on each other constituted a threat to the health and safety of the inmates. The inmates alleged that violence among inmates broke out when urine splashed on inmates who slept on cell floors next to toilets, due to crowding. (Camden County Correctional Facility, New Jersey)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

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 allegedly 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 Co. Detention Ctr., Arkansas)

U.S. District Court
PRISONER ON
PRISONER ASSAULT
SEXUAL ASSAULT

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
SUICIDE

Pardue Ex Rel. Christian v. Ashe, 36 Fed.Appx. 199 (6th Cir. 2002). The next friend and next of kin to an arrestee who committed suicide while being held in a county jail on a domestic assault charge, brought a § 1983 action alleging that the county failed to recognize the arrestee's suicidal tendencies. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the arrestee did not have a constitutional right to be screened correctly for suicidal tendencies, and that he did not show a strong likelihood that he was going to attempt suicide such that the failure to take precautions amounted to deliberate indifference to his serious medical needs. The appeals court also held that there was no evidence that the county had a policy or custom of deliberate indifference to pretrial detainees who were in similar situations to the arrestee. The arrestee had been admitted to a county jail and was placed in a temporary holding cell near the intake desk. Sometime during the night the arrestee hanged himself and his body was discovered the following morning. The appeals court held that "this single incident is not sufficient to impose liability...because it does not establish a pattern of unconstitutional conduct." (Wilson County Criminal Justice Complex, Tennessee)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

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

U.S. District Court
PRISONER SUICIDE

Pelletier v. Magnusson, 195 F.Supp.2d 214 (D.Me. 2002). A personal representative for the estate of an inmate filed a § 1983 action, alleging that state employees violated the Eighth Amendment by failing to prevent the inmate from committing suicide. The appeals court denied the defendants' motion for summary judgment, in part. The court found that summary judgment was precluded by a genuine issue of material fact as to whether correctional officers were aware of clinical meeting notes that indicated that the inmate was very anxious and was hearing voices, and whether they were aware through logs and verbal communication with officers, that the inmate had earlier instances of decompensation. The court also found that summary judgment was precluded because of the spoliation of missing or tampered documents relating to the inmate's medical treatment, and whether a clinical social worker refused to act on a medical recommendation that the inmate required a psychiatric evaluation. (Maine State Prison)

U.S. District Court
PRISONER SUICIDE

Pelletier v. Magnuson, 201 F.Supp.2d 148 (D.Me. 2002). A personal representative for the estate of an inmate who committed suicide in a state prison filed a § 1983 complaint in state courts, alleging Eighth Amendment violations. The district court granted summary judgment for all of the medical defendants, finding that the alleged missing or tampered documents relating to the deceased inmate's medical treatment did not establish that employees of the prison's contracted health care provider were deliberately indifferent to his serious medical needs. The court held that a social worker, medical doctor, and regional supervisor of medical services were not deliberately indifferent. The court found that a licensed psychiatrist was not administratively negligent for allegedly not knowing that the inmate was psychotic and suicidal at all times. The court noted that the decision to scale down the inmate's care was made by a treatment team and was not the result of financial considerations. (Maine State Prison)

U.S. Appeals Court
MEDICAL CARE
PRISONER ON
PRISONER ASSAULT

Perkins v. Lawson, 312 F.3d 872 (7th Cir. 2002). An inmate brought a state court action against a sheriff in his official capacity under § 1983, and under state negligence laws, seeking damages for injuries sustained in an attack by another inmate. The case was removed to federal court, where the district court entered summary judgment for the sheriff. The inmate appealed and the appeals court affirmed in part, vacated and remanded in part. The appeals court remanded the inmate's negligence claim to the state courts because the appeals court was not convinced that there could be no finding of negligence under state law. The inmate had been beaten by another inmate and was provided with some treatment by jail medical staff. He did not eat or drink anything for several days after the attack, claiming he was unable to swallow. The inmate was released on his own recognizance, "probably because of his condition--though the record does not make this clear." His wife immediately took him to a hospital where he was placed on life support in an intensive care unit, in critical condition with a neurological problem. (Grant County Jail, Indiana)

U.S. District Court
PROTECTION FROM
HARM
PAROLE

Petrone v. Pike County Probation Dept., 240 F.Supp.2d 317 (M.D.Pa. 2002). The administrators of the estate of a woman who was killed by her husband, brought a § 1983 action against a county probation office and county probation officers. The administrators alleged that the defendants violated the woman's due process rights by failing to inform her of her husband's long history of violent behavior toward women. The district court held that the administrators pleaded sufficient facts to state a claim against the county probation office and probation officers through the state-created danger exception, in their § 1983 action under the Fourteenth Amendment, by alleging that the defendants knew that the parolee had violent propensities towards women and that he was romantically involved with a woman whom he later murdered. (Pike County Probation Department, Pennsylvania)

U.S. District Court
WRONGFUL DEATH
OFFICER ON PRI-
SONER ASSAULT

Pizzuto v. County of Nassau, 240 F.Supp.2d 203 (E.D.N.Y. 2002). The family of a county corrections facility inmate who had been beaten to death by corrections officers, brought a civil action against the county and officials. The district court held that the inmate's mother and father lacked a substantive due process right to companionship of their 38-year-old son. The court noted that the son lived away from home for six years and started a family of his own, prior to returning to occupy a ground floor apartment in his parent's house three months before his death. The court found that the family stated a claim for intentional infliction of emotional distress under state law. The inmate had been sentenced to ninety days in jail on a misdemeanor charge of driving under the influence of methadone. Upon admission to the county correctional facility, the inmate was assigned to a single cell in the facility's observation tier, based on his status as an inmate receiving methadone treatment. The next morning the inmate complained that he needed his treatment and after a heated exchange with an officer, all inmates on the tier were ordered to their cells. All cell doors were locked, except the inmate's. Moments later, at the direction of a supervisor, three corrections officers went into the inmate's cell with the intention of using force

to control his behavior. While one officer stood outside, two officers donned surgical gloves and beat the inmate for several minutes, punching and kicking him about the face, torso and legs. An extensive cover-up followed. Two days later the inmate collapsed in his cell. He was taken to a hospital where he died from his injuries several days later. (Nassau Co. Corr'l. Center, New York)

U.S. Appeals Court
TRANSPORTATION

Proffitt v. Ridgway, 279 F.3d 503 (7th Cir. 2002). The estate of an arrestee brought a § 1983 action alleging excessive force on the part of a police officer and a private citizen. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the death of the arrestee from a choke hold administered by a bystander, where the arresting officer made no effort to use deadly force against the arrestee, was not deliberate indifference. The appeals court noted that the officer could not have foreseen that the small unarmed man would kill the "hefty" arrestee, even though it was later learned that the man was a martial-arts expert. The officer took reasonable efforts, according to the court, to protect the arrestee by telling the bystander to ease up on the choke hold. (City of Pana, Illinois)

U.S. District Court
PRISONER SUICIDE

Rapier v. Kankakee County, Ill., 203 F.Supp.2d 978 (C.D.Ill. 2002). The wife of a detainee who committed suicide while in jail filed a § 1983 suit individually, and as the special administrator of the detainee's estate. The district court granted summary judgment for the defendants, finding that the county was not liable for alleged deliberate indifference toward the prevention of suicide by detainees. The court found that the county's policy of placing potentially suicidal detainees in a special needs cell, along with its policy to require checks of these inmates every 15 minutes, was an effective way to prevent suicides. The court also found that the county's failure to adequately deal with the problem of understaffing at the jail was not the cause of the detainee's suicide, because an officer saw or spoke to the detainee 15 to 20 minutes prior to the time he was found hanging in his cell. The sheriff has stated that seven staff members were working at the jail at the time of the suicide, the jail's census was lower than usual at the time, and that he did not think that having additional staff would have made a tremendous difference. (Kankakee Co. Detention Ctr., Illinois)

U.S. Appeals Court
SEXUAL ASSAULT
OFFICER ON
PRISONER ASSAULT

Riley v. Olk-Long, 282 F.3d 592 (8th Cir. 2002). A female inmate brought a § 1983 action against prison officials arising from a sexual assault by a prison guard. A jury found in the inmate's favor and the officials moved for judgment as a matter of law or for a new trial. The district court denied the motions and the appeals court affirmed. The appeals court held that the issue of whether a warden and a director of security were deliberately indifferent to the substantial risk of harm that the guard presented to female inmates was a matter for the jury. The guard had asked the inmate whether she was having a sexual relationship with her roommate at the facility and if so, if he could watch. The guard later attempted to reach under the inmate's nightshirt but she backed away. The guard continued to harass the inmate and at one point grabbed her from behind and rubbed up against her while grabbing her breasts. The inmate did not report these incidents to prison officials because she doubted she would be believed and feared the resulting discipline. Later, the guard entered the inmate's cell and forcibly had intercourse with her. Fearing she would become pregnant she began performing oral sex on him. Another inmate witnessed the sexual encounter and reported it to prison officials. The officials investigated and subsequently allowed the guard to resign. He was later charged with, and pleaded guilty to, sexual misconduct with an inmate. The district court jury found in favor of the inmate, awarding her compensatory damages of \$15,000 and a total of \$30,000 in punitive damages. (Iowa Corr'l Instit. for Women)

U.S. District Court
OFFICER ON PRI-
SONER ASSAULT

Sheppard v. Phoenix, 210 F.Supp.2d 450 (S.D.N.Y. 2002). Current and former inmates filed a class action alleging that city corrections officials engaged in a pattern of brutality and used gratuitous and excessive physical violence at a segregation unit. A detailed consent decree was implemented. The city moved to terminate the decree and the district court granted the motion. The district court noted positive trends for four years of reduced incidents involving serious injuries and head strikes, reduced acts of self-mutilation, unprecedented levels of command discipline, and the institution of procedures to safely and effectively manage the inmate population. (Central Punitive Segregation Unit, Rikers Island, New York City Dept. of Correction)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

Skrtich v. Thornton, 280 F.3d 1295 (11th Cir. 2002). A prison inmate brought a § 1983 action against corrections officers alleging Eighth Amendment violations resulting from an alleged excessive use of force against him. The district court denied the defendants' motions for summary judgment and dismissal and the officers appealed. The appeals court affirmed, finding that the defense of qualified immunity was not available to the officers. According to the court, the inmate's allegations that the officers used excessive force when they went to his cell to extract him when he refused to voluntarily leave to permit a search to be conducted, were sufficient to state a § 1983 claim for violation of his Eighth Amendment rights. The officers used an electronic shield to shock and incapacitate the inmate, and allegedly punched, kicked and beat him to the extent that he had to be airlifted to a hospital for treatment. The court noted that the inmate acknowledged that some degree of force was warranted in light of his history of disciplinary problems and his refusal to cooperate with the search. (Florida State Prison)

U.S. District Court
MEDICAL CARE

Smith v. Lejeune, 203 F.Supp.2d 1260 (D.Wyo. 2002). Following the death of her husband who had been detained at a county detention facility, a wife brought an action against a physician,

nurses and others, alleging deliberate indifference in violation of § 1983. The district court granted summary judgment in favor of the defendants, finding that the physician had trained nurses regarding alcohol withdrawal, and the nurses did not have the requisite state of mind, knowledge and disregard of possible risks to sustain a deliberate indifference claim. According to the court, the physician did not fail to train the nurses, where he provided the nurses with protocols and policies to deal with alcohol and alcohol withdrawal, and conducted monthly meetings during which the policies were discussed. The nurses had not identified any signs that the detainee was suffering from alcohol withdrawal, and the detainee had denied any history of suffering from alcohol withdrawal. The detainee had been arrested for driving under the influence of alcohol, and a breath alcohol test identified a level of .317. (Laramie Co. Det. Fac., Wyoming)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

Smith v. Mensinger, 293 F.3d 641 (3rd Cir. 2002). A state inmate sued corrections officers and prison employees under § 1983 for alleged violations of his due process and Eighth Amendment rights. The district court dismissed the due process claims and granted summary judgment for the defendants on the Eighth Amendment claims. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that factual issues precluded summary judgment for the corrections officers who were allegedly involved in an unprovoked beating of the inmate. The court also found that fact issues precluded summary judgment on the Eighth Amendment claim against a corrections officer who failed to intervene to stop other officers' use of excessive force against the inmate. (State Correctional Facility, Frackville, Pennsylvania)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Smith v. Muccino, 223 F.Supp.2d 396 (D.Conn. 2002). A state prisoner brought a pro se action alleging that the practice of housing him with violent inmates, sometimes in retaliation for his complaints, violated his constitutional rights. After an agreement to settle the case fell through, the court reopened the case and held that the prisoner's allegations stated a claim for an Eighth Amendment violation. The court noted that the prisoner was not claiming that double-celling was per se unlawful. The prisoner, who is Caucasian and who believes he is perceived to be gay, alleged that he was repeatedly housed with racist and homophobic inmates, and that his requests for a cell change were ignored. (Osborn Correctional Institution, Connecticut)

U.S. Appeals Court
PRISONER ON
OFFICER ASSAULT

Sperle v. Michigan Dept. of Corrections, 297 F.3d 483 (6th Cir. 2002). The husband of a woman who was murdered while working in a prison sued officials for failing to prevent her murder and for allowing a sexually hostile work environment to exist at the prison. The district court granted summary judgment for the defendants and the appeals court affirmed. The appeals court held that the prison officials did not act with deliberate indifference, that the husband failed to establish a fact issue in his wife's sexual harassment claim, and that the husband failed to prove that the prison, through any direct act, specifically intended to injure his wife. A prisoner murdered the plaintiff's wife when she was working at her job in the prison store. The court noted that even if prison officials could have made working conditions safer for the wife by providing personal protection devices to employees, adding extra security officers, or insuring greater supervision of the prisoner, they did not act in a manner that shocked the conscience of the court or that indicated any intent to injure her. (Huron Valley Men's Facility, Michigan)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

Townsend v. Moya, 291 F.3d 859 (5th Cir. 2002). An inmate brought a § 1983 action against a prison officer seeking damages for the officer's action in cutting the inmate with a knife. The district court granted summary judgment for the officer and the appeals court affirmed. The appeals court held that the officer's action with a knife was not taken "under color of state law" for the purposes of § 1983. The court noted that if a state officer pursues personal objectives without using or misusing the power granted to him by the state, then he is not acting under the color of state law. The inmate had been working as a trusty caring for the officer's tracking dogs. The officer approached the inmate from behind with a pocketknife, saying "I told you I was going to get you, whore" and stabbed the inmate on his buttocks. The officer was eventually terminated for his actions, but criminal charges were dropped for insufficient evidence. (Hughes Unit, Texas Department of Criminal Justice- Institutional Division)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Tucker v. Evans, 276 F.3d 999 (8th Cir. 2002). The estate of a prisoner who was killed in an attack by fellow inmates brought a § 1983 action against a prison employee and others, claiming they failed to protect him and that prison officials failed to properly train prison staff. The district court denied summary judgment to the defendants and they appealed. The appeals court reversed, finding that the prison officer did not show callous indifference to the prisoner and was therefore entitled to qualified immunity, and that the prison warden and supervisor did not violate the Eighth Amendment by failing to train the officer. The court noted that the officer had no warning that the prisoner was at risk because he did not know about an argument between the prisoner and another inmate, and he observed the two watching television together later in the evening. According to the court, the officer received proper training by having completed a six-week training course at the state's corrections training academy and receiving subsequent on-the-job training. (East Arkansas Regional Unit, Arkansas Department of Correction)

U.S. Appeals Court
OFFICER ON
PRISONER ASSAULT

U.S. v. Daniels, 281 F.3d 168 (5th Cir. 2002). Three corrections officers were convicted for civil rights violations arising from an incident in which two of the officers beat a prisoner and the third officer was found to have "witnessed the attack and willfully permitted and made no attempt to

stop it." The officers appealed their convictions and the appeals court affirmed. (Louisiana State Prison, Angola)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Washington v. LaPorte County Sheriff's Dept., 306 F.3d 515 (7th Cir. 2002). A pretrial detainee brought a § 1983 due process claim against a jail and its officers, alleging that injuries he suffered when he was attacked by another inmate were caused by the jail's cell assignment policy. The district court granted summary judgment in favor of the defendants and the detainee appealed. The appeals court affirmed, finding that the jail's cell assignment policy did not demonstrate deliberate indifference on the part of officials to a substantial risk of serious harm to the detainee. The policy allowed inmates to choose their own cell assignments. The detainee was charged with driving with a suspended license and he was detained at the jail pending trial, as he was unable to post bond. He was assigned to a cell block originally designed to hold ten inmates, but which actually housed seventeen. The detainee was allowed to choose his own cell assignment within the housing unit. The court noted that the detainee shared a cell with the inmate who eventually assaulted him for two weeks without incident prior to the attack, and did not inform jail officers he had fought with the inmate or that he feared harm. (LaPointe County Jail, Indiana)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

White v. Crane, 45 Fed.Appx. 552 (8th Cir. 2002). A county jail inmate brought a civil rights action against a sheriff, jail administrators, and jail officers, seeking compensation for injuries incurred when he was placed in a cell with another inmate who assaulted him. The appeals court granted summary judgment in favor of the jail officers, but the appeals court reversed and remanded, finding that the officers could not reasonably believe they were not violating the inmate's right to be free from attack. Upon admission to the jail, the plaintiff inmate had notified an officer that the other inmate should be put on his enemy-alert list because of a problem he had just had with his wife. When officers placed plaintiff inmate in the same housing unit with the other inmate, the plaintiff had asked them to at least handcuff the other inmate before opening the door and the officers refused. When the door was opened the attack immediately occurred. (Hempstead County Detention Facility, Arkansas)

2003

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Adames v. Perez, 331 F.3d 508 (5th Cir. 2003). A state prison inmate brought a § 1983 action against five corrections officials, alleging failure to protect him from an attack by a fellow inmate. The district court entered judgment on jury verdict for the inmate against three of the officials, and they appealed. The appeals court reversed and remanded. The appeals court held that evidence of isolated previous attacks was insufficient to show deliberate indifference to the inmate's safety, and that warden's receipt of a message about cell breaks in other prisons was insufficient to show deliberate indifference. The court also held that the fact that the inmate had told an official of illicit drug activity involving members of the inmate's gang, was insufficient to show deliberate indifference. (McConnell Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
PRISONER SUICIDE

Cagle v. Sutherland, 334 F.3d 980 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who hung himself in his cell brought a § 1983 action, alleging that officials failed to prevent his suicide. The district court denied summary judgment in favor of the defendants and they appealed. The appeals court vacated and remanded. The appeals court held that the county's violation of a consent decree that arose out of a voluntary settlement of a prior jail conditions lawsuit, did not establish a violation of the pretrial detainee's constitutional rights actionable under § 1983. The consent decree required the county to provide a second nighttime jailer to staff the jail during the hours that the detainee committed suicide, but the court noted that the prior lawsuit was not concerned with the risk of prisoner suicides. According to the court, the county's failure to fund the second jailer did not rise to the level of deliberate indifference to the strong likelihood that a suicide would result. The court also found no deliberate indifference on the part of the jailer who waited for one hour and forty-six minutes after his last cell check, even though the detainee had expressly threatened suicide. The court noted that the jailer was aware that the detainee's belt, shoelaces and the contents of his pockets had been confiscated, the cell had been stripped of implements that might assist suicide, and the jailer regularly observed the detainee through a closed circuit monitor that viewed the majority of the cell. The detainee was able to commit suicide by tearing the elastic band from his underwear, tying it around his neck, and hanging himself from the top bunk. (Winston County Jail, Alabama)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Cardenas v. Lewis, 66 Fed.Appx. 86 (9th Cir. 2003). [unpublished] A pretrial detainee brought a pro se § 1983 action against a county, alleging deliberate indifference to a substantial risk to his safety. 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 officers who placed the detainee in a holding tank with an inmate, from whom the detainee was supposed to be kept separated, were not acting with deliberate indifference, even if the officers were negligent in failing to check the detainee's "keep separate" wristband. The court found that the detainee was deprived of due process in disciplinary proceedings in which he was allegedly not allowed to call witnesses, to have his exculpatory statement read, or to tape the hearings, and was placed in segregation without a hearing. (Yakima County Department of Corrections, Washington)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Carter v. Galloway, 352 F.3d 1346 (11th Cir. 2003). An inmate brought a § 1983 suit against prison officials, alleging deliberate indifference to a substantial risk of serious harm, by failing to protect him from an attack by his cellmate. The district court granted summary judgment for the officials and the appeals court affirmed. The appeals court held that the inmate failed to establish a claim for deliberate indifference because the officials' generalized awareness of risk did not satisfy the subjective awareness requirement. The court noted that although the officials knew that the cellmate was a "problem inmate" with a well-documented history of prison disobedience and had been prone to violence, this generalized awareness of risk did not satisfy the subjective awareness requirement necessary to impose liability. The inmate had notified officials that the cellmate was acting "crazy," roaming his cell like a "caged animal." (Hays State Prison, Georgia)

U.S. Appeals Court
SUICIDE ATTEMPT

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

U.S. Appeals Court
PRISONER SUICIDE

Coleman Ex Rel. Coleman v. Parkman, 349 F.3d 534 (8th Cir. 2003). The administratrix of a pretrial detainee's estate brought an action, alleging that prison officials had been deliberately indifferent to the risk that the detainee would commit suicide. The district court granted summary judgment for the defendants in part, and the parties appealed. The appeals court affirmed in part and dismissed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the arresting officer knew that the detainee presented a substantial suicide risk, and whether a jailer recklessly failed to take reasonable measures. The arresting officer had been told by someone who was with the detainee before his arrest, that the detainee had been carrying a rifle and threatening suicide. After interviewing the detainee, the officer concluded he was not a suicide risk. Jail records stated that the detainee had threatened suicide and needed to be placed in isolation and monitored. The detainee was placed in the jail's drunk tank, instead of the holding cell that was usually used for suicidal inmates. The drunk tank had eighteen exposed bars, while the holding cell had none. The drunk tank was difficult to observe because it was upstairs in the jail, unlike the holding tank. Because the detainee was assigned to the drunk tank, and in spite of his being on a suicide watch, an officer issued the detainee the usual items, including a bed sheet. The officer checked on the detainee at 1:30 a.m.; the detainee was found hanging from the exposed bars by a bed sheet at 1:42 a.m. (St. Francis County Jail, Arkansas)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Cottone v. Jenne, 326 F.3d 1352 (11th Cir. 2003). The personal representative of the estate of a pretrial detainee who was killed by a mentally-ill co-inmate, brought a § 1983 action. The district court denied qualified immunity for the defendants and they appealed. The appeals court affirmed in part and reversed in part. The appeals court held that officers were not entitled to qualified immunity because they failed to monitor a known violent inmate that was housed in a unit for mentally ill inmates. The court held that supervisory officials were entitled to qualified immunity from § 1983 liability for their failure to train and supervise officers on duty at the time of the murder, absent an allegation of a constitutional violation on their part. (N. Broward Det. Ctr, Fla.)

U.S. District Court
PRISONER SUICIDE

Crocker v. County of Macomb, 285 F.Supp.2d 971 (E.D.Mich. 2003). The personal representative of the estate of deceased arrestee brought a § 1983 action against a county and officials, alleging they were deliberately indifferent to the serious medical needs of the inmate, who committed suicide in a holding cell. The court granted summary judgment in favor of the defendants, finding that the arrestee did not demonstrate a strong likelihood of taking his own life, as required to trigger a due process right to reasonable protection. The arrestee was brought to the county jail on an outstanding warrant. The admitting officer noted that the arrestee smelled like alcohol but saw that he was able to walk and talk without difficulty, remember telephone numbers, and use the telephone. The arrestee was placed in a holding cell with a telephone where he made more than twenty calls during the two hours he was held. He was discovered hanging from the telephone cord approximately two hours after he was admitted. The court noted that the arrestee's behavior while confined indicated an awareness of the present and a concern for the future, indicative of a person wanting to live, not die. (Macomb County Jail, Michigan)

U.S. Appeals Court
MEDICAL CARE

Estate of Allen v. City of Rockford, 349 F.3d 1015 (7th Cir. 2003). A pretrial detainee sued a city and several police officers under § 1983, alleging due process violations stemming from unwanted

medical treatment received at a hospital following her arrest for driving under the influence of drugs. The district court granted summary judgment in favor of the defendants. The appeals court affirmed. The appeals court held that the officers owed the detainee a duty of care and safety during the time that the detainee was at the hospital, and that the officers' failure to intervene with the forcible medical treatment of the detainee did not violate her due process rights. The officers had taken the detainee to a hospital for the purpose of obtaining a urine sample. An emergency room physician stated that the detainee was not competent to make medical decisions regarding her health and might suffer a potentially life-threatening drug overdose if a drug screen was not conducted. The officers did not prevent the forcible extraction of blood and urine samples. (City of Rockford, Illinois)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

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

U.S. District Court
PRISONER SUICIDE

Gray v. Tunica County, Mississippi, 279 F.Supp.2d 789 (N.D.Miss. 2003). The estate of a jail inmate and his relatives brought a suit against a county and a jailer, alleging federal civil rights claims and state law claims. The inmate had committed suicide in a jail holding cell. The district court granted summary judgment, in part, for the defendants. The court held that the county had no civil rights liability for jail conditions or policies related to the suicide of the pretrial detainee who was placed in a new "lunacy" cell under a suicide watch. The detainee apparently managed to strangle himself with a ripped-off piece of his jail jumpsuit. The court found that the holding cell was new and safe and that the method of suicide was unforeseeable. The court noted that it was doubtful that the detainee could have been helped, even if a jailer had entered the cell immediately upon noticing that the detainee had removed his jumpsuit and was lying nude in a peculiar position. According to the court, the jail policies involving intermittent checks were reasonably related to the legitimate purpose of protecting inmates from harm. The jailer had decided to finish feeding other inmates before he returned to check on the welfare of the detainee in the holding cell. The detainee had been checked about an hour after being placed in the new holding cell, and the jailer returned 30 minutes later to discover the detainee unconscious in the cell. (Tunica County Jail, Mississippi)

U.S. District Court
OFFICER ON PRI-
SONER ASSAULT

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 use of excessive force. (Piedmont Reg'l Jail, VA)

U.S. District Court
MEDICAL CARE

Joseph Ex Rel. Estate of Harbin v. City of Detroit, 289 F.Supp.2d 863 (E.D.Mich. 2003). The personal representative of the estate of an arrestee brought a § 1983 action in state court, alleging deliberate indifference to his serious medical needs. The representative alleged that jailers delayed attending to the arrestee when he repeatedly complained of chest pain. The arrestee was eventually taken to a hospital where he died 12 hours later. The district court granted summary judgment for the defendants, finding that the police department's alleged five-hour delay in taking the arrestee to the hospital did not rise to the level of an objective, serious harm. The court noted that there was no evidence that any officer actually perceived, or knew of, a substantial risk of serious harm, nor that his death could have been avoided if he had received more prompt medical treatment. (Sixth Precinct Station House, Detroit Police Department, Michigan)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT
USE OF FORCE

Marquez v. Gutierrez, 322 F.3d 689 (9th Cir. 2003). A state prison inmate brought a § 1983 action alleging that an officer's act of shooting him during an assault on another inmate constituted use of excessive force in violation of the Eighth Amendment. The district court denied summary judgment for the officer and the officer appealed. The appeals court reversed, finding that the corrections officer was entitled to qualified immunity. The court found that a reasonable officer could have believed that shooting one inmate in the leg to stop an assault that could have seriously injured or killed another inmate was a good faith effort to restore order, and was therefore lawful. (California State Prison- Sacramento)

U.S. Appeals Court
PRISONER SUICIDE

Matos Ex Rel. Matos v. O'Sullivan, 335 F.3d 553 (7th Cir. 2003). The administrator of the estate of a state prisoner, who committed suicide by hanging himself while incarcerated, brought a § 1983 action alleging deliberate indifference to the prisoner's risk of suicide. The district court granted

summary judgment in favor of all defendants, and the administrator appealed. The appeals court affirmed, finding that the administrator failed to show that prison officials were deliberately indifferent. The court noted that although a medical form existed indicating that the prisoner had once attempted suicide, the form was not included in the prisoner's medical records, and officials asserted that they never knew about that form. The prisoner never told any official that he felt suicidal or depressed beyond his control, despite having been asked that question numerous times during intake interviews, psychological evaluations, crisis counseling, and physical exams. (Western Illinois Correctional Facility)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Miller v. McBride, 64 Fed.Appx. 558 (7th Cir. 2003) [unpublished]. An inmate who was injured in a fight sued prison officials under § 1983 for failing to protect him from prisoners in a gang. The district court granted summary judgment for the prison officials and the inmate appealed. The appeals court affirmed, finding that prison officials were not deliberately indifferent, even if an officer was grossly negligent in leaving a dorm without securing a replacement, just prior to the fight between an alleged gang member and the inmate. (Westville Correctional Center, Indiana)

U.S. District Court
OFFICER ON
PRISONER ASSAULT
SEARCHES

Mladek v. Day, 293 F.Supp.2d 1297 (M.D.Ga. 2003). An arrestee brought a suit against county officials alleging they violated his Fourth, Eighth and Fourteenth Amendment rights when they used excessive force during and after his arrest, and when they denied him medical attention as a pretrial detainee. The district court dismissed the suit in part, and denied dismissal in part. The court held that allegations that a deputy violently handcuffed the arrestee with no justification, and that the handcuffing caused physical injury to the arrestee, were sufficient to state an excessive force claim under the Fourth Amendment. The court held that the alleged denial of medical attention for the detainee's injuries during the one day he was detained was insufficient to assert a constitutional violation. (Walton County, Georgia)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Mooring v. San Francisco Sheriff's Dept., 289 F.Supp.2d 1110 (N.D.Cal. 2003). A county jail inmate brought a pro se § 1983 action alleging deliberate indifference to his safety when he was housed unwillingly with gang rivals who assaulted him. The court granted summary judgment for the defendants. The court held that a deputy sheriff did not violate the inmate's due process right to protection from violence, absent any evidence that the deputy knew the inmate's particular gang affiliation or that the deputy could have learned the inmate's gang affiliation from information on the inmate's housing records. (San Francisco County Jail, California)

U.S. District Court
OFFICER ON
PRISONER ASSAULT
SEXUAL ASSAULT

Morris v. Eversley, 282 F.Supp.2d 196 (S.D.N.Y. 2003). A former inmate brought a § 1983 alleging that she had been sexually assaulted by a correctional officer. The court granted summary judgment in favor of the defendants, finding that the inmate failed to show that the defendants had any personal involvement in the alleged deprivation of her rights. The inmate alleged that a male correctional officer entered her cell one night and sexually assaulted her, and that this was but one example of an ongoing pattern and practice at the prison. (Bayview Correctional Facility, New York)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Odom v. South Carolina Dept. of Corrections, 349 F.3d 765 (4th Cir. 2003). A prisoner filed a pro se § 1983 action alleging that corrections officers knowingly and willingly put his life in danger. The district court granted summary judgment in favor of the defendants and the prisoner appealed. The appeals court vacated and remanded, holding that the prisoner's allegations demonstrated deliberate indifference to his safety and violated his clearly-established Eighth Amendment rights. The officers allegedly placed the prisoner in an outdoor exercise enclosure next to fellow inmates who were attempting to break into the enclosure. The officers allegedly walked away from the prisoner and refused to help. The officers allegedly watched for 45 minutes while the inmates worked to gain access to the enclosure, and then assaulted the prisoner. The prisoner had warned the officers that a group of fellow inmates would kill him if he were put in an area where they could gain access to him. (Evans Correctional Institution, South Carolina)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Pagels v. Morrison, 335 F.3d 736 (8th Cir. 2003). An inmate brought a § 1983 action claiming that a correctional center unit manager violated his Eighth Amendment rights by failing to protect him from an assault by other inmates. The district court denied the manager's motion for summary judgment and the manager appealed. The appeals court reversed. The court held that evidence was insufficient to establish that the manager knew of a risk to the inmate's safety, and the manager was entitled to qualified immunity. The court noted that the inmate had stated in a letter, whose purpose was to disavow ownership of contraband, that he was not worried about getting hurt, and the search of his cell did not reveal any further danger to the inmate. (Moberly Correctional Center, Missouri)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Palmer v. Marion County, 327 F.3d 588 (7th Cir. 2003). A pretrial detainee who was severely beaten by other inmates at a county jail, brought a § 1983 claim alleging deliberate indifference to his safety and failure to properly train and supervise jail officials. The district court granted summary judgment in favor of the defendants and the appeals court affirmed. The appeals court held that the detainee's affidavit that stated he personally observed the county jail's practices of segregating inmates by race, placing gang members with non-gang members, not segregating inmates who feel threatened, and not intervening to stop inmate-on-inmate violence in cell blocks

occupied predominantly by non-white inmates, was insufficient to show that the county had either a widespread practice of allowing jail inmates to fight or segregating them by race. (Marion County Jail, Indiana)

U.S. District Court
OFFICER ON
PRISONER ASSAULT

Perkins v. Brown, 285 F.Supp.2d 279 (E.D.N.Y. 2003). An inmate brought a pro se § 1983 action alleging use of excessive force by corrections officers and failure to provide medical care. The district court held that the inmate would be treated as a pretrial detainee. The court granted summary judgment in favor of the officers. The court held that the officers did not use excessive force against the detainee when they forcibly undressed and searched him in a courthouse holding cell. The court found that the detainee's injuries were minor and noted that he was taken to the courthouse infirmary immediately after he was injured. (New York City Department of Correction, Brooklyn Criminal Courthouse)

U.S. District Court
OFFICER ON PRI-
SONER ASSAULT
WRONGFUL DEATH

Pizzuto v. County of Nassau, 239 F.Supp.2d 301 (E.D.N.Y. 2003). Family members of a county corrections inmate who was fatally beaten by corrections officers sued the officers involved in the incident, the officers' supervisors, and the county, alleging that they were liable under federal and state law for the inmate's murder. The court held that the officers who pleaded guilty or were convicted in connection with the conspiracy could not dispute their § 1983 liability, and were liable for deliberate indifference to the inmate's serious medical needs. The court found the officer who watched the beating was liable for being deliberately indifferent to a serious risk of harm to the inmate. The court held the supervisor liable for supervisory liability under § 1983 based both on his personal involvement and on the acts of his subordinates. The inmate had been sentenced to ninety days in jail on a misdemeanor charge of driving under the influence of methadone. Upon admission to the county correctional facility, the inmate was assigned to a single cell in the facility's observation tier, based on his status as an inmate receiving methadone treatment. The next morning the inmate complained that he needed his treatment and after a heated exchange with an officer, all inmates on the tier were ordered to their cells. All cell doors were locked, except the inmate's. Moments later, at the direction of a supervisor, three corrections officers went into the inmate's cell with the intention of using force to control his behavior. While one officer stood outside, two officers donned surgical gloves and beat the inmate for several minutes, punching and kicking him about the face, torso and legs. An extensive cover-up followed. Two days later the inmate collapsed in his cell. He was taken to a hospital where he died from his injuries several days later. (Nassau County Correctional Center, New York)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Robinson v. U.S. Bureau of Prisons, 244 F.Supp.2d 57 (N.D.N.Y. 2003). The mother of a federal prisoner who died after he was stabbed by another inmate, brought § 1983 and Federal Tort Claims Act actions against prison officials. The district court held that prison officials were not deliberately indifferent to the serious medical needs of the inmate, and that the officials were not negligent under state law. The mother had alleged inadequate supervision and staffing practices, citing an instance in which one corrections officer supervised 219 inmates who had violent proclivities during a facility-wide move. The court noted that the mother did not offer any expert testimony or other evidence to establish that the officials were aware of an excessive risk to the inmate's safety. (Raybrook Federal Correctional Facility, New York)

U.S. District Court
MEDICAL CARE

Smith v. Michigan, 256 F.Supp.2d 704 (E.D. Mich. 2003). The estate of a prison inmate sued the state and individuals, alleging that their failure to respond to the inmate's requests for medication and medical attention, following his return from the hospital, precipitated his death. The district court dismissed the case, in part. The court held that the estate stated a claim for violation of the inmate's Eighth Amendment rights. The estate alleged that the officials ignored inmate's request for follow up medication and monitoring after his return from the hospital, causing him to develop fatal pneumonia. The court found that deliberate indifference was shown through the officials' lack of response when the inmate asked for the continuation of medications and follow up of medical care. (Mound Correctional Facility, Michigan)

U.S. District Court
PRISONER ON PRI-
SONER ASSAULT

Thompson v. Eason, 258 F.Supp.2d 508 (N.D.Tex. 2003). A prisoner filed a civil rights complaint against prison officials, alleging that they retaliated against him and failed to protect him from assaults and threats by prison gang members. The district court granted summary judgment in favor of the defendants, finding that they were entitled to qualified immunity. According to the court, each official responded to the prisoner's complaints about threats and assaults by reporting the complaints to supervising officers, conducting an investigation into the complaints, or referring the complaints to the proper prison authority so that the complaints could be investigated. (Texas Department of Criminal Justice, Institutional Division, French Robertson Unit)

U.S. Appeals Court
PRISONER ON PRI-
SONER ASSAULT

Verdecia v. Adams, 327 F.3d 1171 (10th Cir. 2003). A federal prison inmate brought a civil rights action against prison investigative agents who allegedly placed him in a cell with gang members who assaulted him because of his Cuban nationality. The district court denied the agents' motion for summary judgment on qualified immunity grounds and they appealed. The appeals court reversed and remanded. The appeals court held that the inmate failed to establish that the agents were subjectively aware of an alleged risk to the inmate, sufficient to establish an Eighth Amendment deliberate indifference claim. (United States Penitentiary, Florence, Colorado)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Ashford v. District of Columbia, 306 F.Supp.2d 8 (D.D.C. 2004). A prisoner brought a civil rights action against the District of Columbia and its employees, alleging they were liable to him for injuries resulting from an attack by other inmates. The district court held that the prisoner stated a sufficient causal connection between his injuries and the District's alleged policy or custom of transferring inmates without informing the receiving institutions about active separation orders. The court also found that the prisoner stated a claim under § 1983 against the District's Interstate Compacts administrator. The court noted that the prisoner told prison officials at the receiving facility about the separation orders, but that an official separation order would have received more consideration and attention. (Pleasant Valley State Prison, California)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

Berry v. Sherman, 365 F.3d 631 (8th Cir. 2004). An inmate who was attacked by his cellmate brought a civil rights suit against correctional officers, alleging violation of his equal protection rights and failure to protect. The district court entered summary judgment in favor of all officers on the equal protection claim, but denied qualified immunity to certain officers for the failure to protect claim. The officers appealed and the appeals court reversed. The appeals court held that the inmate failed to show that officers knew of a substantial risk of harm to him as the result of his complaints about his cellmate's hygiene, and a report from another inmate that the cellmate had a knife. The court noted that officers searched the cell for the knife, and that the inmate repeatedly refused protective custody. (Northeast Correctional Center, Missouri)

U.S. District Court
THREATS

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
OFFICER ON PRIS-
ONER ASSAULT

Broner v. Flynn, 311 F.Supp.2d 227 (D.Mass. 2004). A state prisoner brought a civil rights action against a county sheriff, alleging violation of his rights as the result of injuries he received during an assault by another prisoner. The district court granted summary judgment for the defendants. The court held that the prisoner failed to show that any acts or omissions by the sheriff in his individual capacity amounted to reckless or callous indifference to the prisoner's Eighth Amendment rights. The court found that an officer, who had gone into the cell block to break up a prior fight between prisoners, was justified in not entering the cell block to break up the fight in which the prisoner was injured, because he feared that the responding officers would have been ambushed because of the location of the fight. (Worcester County Jail and House of Corrections, Massachusetts)

U.S. Appeals Court
TRANSPORTATION

Brown v. Missouri Dept. of Corrections, 353 F.3d 1038 (8th Cir. 2004). A state inmate brought a § 1983 action, alleging that officials were liable for injuries he received in an accident while en route to a correctional facility, for denying post-accident care, and for providing inadequate care. The district court dismissed the action and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate had sufficiently alleged § 1983 claims for deliberate indifference to his safety and deliberate indifference to his medical needs. The inmate alleged that he asked officials to fasten his seatbelt and they refused, and that he was unable to do it himself because he was shackled. The inmate also alleged that he asked correctional officers of three occasions to let him see medical staff, claiming he was having severe complications from the accident, including difficulty seeing and standing and shaky legs, but his requests were ignored. (Jefferson City Correctional Center, Missouri)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Brown v. Scott, 329 F.Supp.2d 905 (E.D.Mich. 2004). A state inmate filed a § 1983 action alleging that a resident unit manager at a correctional facility failed to protect him from his cellmate. The district court denied summary judgment in favor of the manager. The court held that issues remained as to whether the manager knew that the inmate's cellmate was a predatory homosexual and disregarded the risk to the inmate by not transferring him or segregating him from his cellmate. (St. Louis Correctional Facility, Michigan)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Carmichael v. Richards, 307 F.Supp.2d 1014 (S.D.Ind. 2004). A county jail prisoner who was injured by his cellmate brought a § 1983 action against a sheriff in his individual and official capacities, claiming that the sheriff failed to take reasonable measures to ensure his physical safety, and did not provide necessary medical care. The district court granted summary judgment in favor of the defendants. The court held that the sheriff could not be held individually liable for failing to ensure the physical safety of a medium security inmate who was injured by a maximum security inmate, absent evidence that the sheriff knew of a substantial risk that the inmate would

be harmed, or evidence of a causal link between the policy of mixing of medium and maximum security prisoners and the increased risk of violence. The court also found that the sheriff was not liable in his official capacity. The jail had three types of cell classifications: maximum, medium and minimum security. Inmates are classified by the shift leader who is on duty at the time an inmate arrives at the jail. (Johnson County Jail, Indiana)

U.S. District Court
TRANSPORTATION

Carrasquillo v. City of New York, 324 F.Supp.2d 428 (S.D.N.Y. 2004). A city prisoner brought a suit alleging he was injured in a bus accident while being transported to court. The district court dismissed the action, in part. The court held that the city did not violate the prisoner's constitutional rights by failing to provide him with a seatbelt while transporting him in handcuffs on a bus. The inmate alleged that his injuries caused him "extreme pain and suffering" and that he could "hardly support himself" and that he was denied adequate treatment. (New York City Department of Correctional Services)

U.S. Appeals Court
PROTECTION FROM
HARM

Christopher v. Buss, 384 F.3d 879 (7th Cir. 2004). A state inmate brought a § 1983 action alleging that failure to correct an allegedly defective condition on a prison softball field constituted cruel and unusual punishment. The district court dismissed the case and the inmate appealed. The appeals court affirmed. The court held that an allegedly "protrusive lip" on a softball field, even if it was hazardous when a ball hit it in a certain way, did not amount to a condition which was objectively serious enough to implicate the Eighth Amendment. The inmate claimed that a softball had bounced up and permanently damaged his eye. (Westville Correctional Facility, Indiana)

U.S. District Court
MEDICAL CARE

Cooper v. Office of Sheriff of Will County, 333 F.Supp.2d 728 (N.D.Ill. 2004). A pretrial detainee's surviving father brought an action against a county, sheriff, and deputies after his son died as the result of an asthma attack while he was incarcerated. The district court held that state law did not preclude the possibility of respondeat superior liability on the sheriff for a deputy's intentional or willful conduct. According to the court, the father's allegations were sufficient to state a § 1983 claim against the deputies based on deliberate indifference to the detainee's serious medical condition. The court noted that the central allegation in the complaint was that the deputies failed to provide timely medical care and treatment to the detainee. The detainee had been placed in the general population of the jail, and had previously had an asthma attack that required inhaler medication. When the detainee had a subsequent attack, he and other inmates informed deputies on duty that immediate medical care was necessary, but the deputies failed to act in a timely manner and the detainee died. (Will County Jail, Illinois)

U.S. District Court
PROTECTION FROM
HARM

Davis v. Reilly, 324 F.Supp.2d 361 (E.D.N.Y. 2004). A prisoner who was injured when he slipped and fell on a wet floor outside of a shower area brought a pro se § 1983 action, alleging failure to remedy the wet shower area and inadequate medical care. The district court dismissed the action. The court held that the inmate failed to exhaust administrative remedies, and that the injuries the inmate sustained did not constitute a serious medical condition. The inmate had sprained his back and neck, and experienced pain in his left testicle. The court found that failure to provide mats for the wet shower area did not rise to the level of a constitutional violation. (Nassau County Correctional Center, New York)

U.S. District Court
PRISONER SUICIDE

Dipace v. Goord, 308 F.Supp.2d 274 (S.D.N.Y. 2004). The estate and survivors of a state inmate brought a § 1983 action alleging that corrections and mental health officials were deliberately indifferent to the inmate's serious mental illness, which resulted in his suicide. The district court held that corrections employees who failed to attempt to resuscitate the inmate did not violate any clearly established right of the inmate, and ruled that the employees were entitled to qualified immunity. The officer who first discovered the inmate hanging in his cell did not attempt to resuscitate the inmate because he believed that the inmate was already dead, and that emergency help was on its way. The court noted that there was no evidence that the inmate had a pulse or was breathing at the time the corrections officer arrived. (Sullivan Corr'l Facility, New York)

U.S. Appeals Court
PROTECTION FROM
HARM

Gatlin ex rel. Gatlin v. Green, 362 F.3d 1089 (8th Cir. 2004). The estate of a cooperating witness in a murder investigation brought an action against a police officer and city. The witness was murdered after police allegedly released a prisoner's letter that identified the witness. The district court entered summary judgment for the defendant and the estate appealed. The appeals court affirmed, finding that the city's failure to provide more training to police officers in witness and informant protection or the regulation of jail correspondence, was inadequate to support civil rights liability of the city under a failure-to-train theory. During a routine mail inspection, jail officials discovered that an accused murderer attempted to mail a transcript of the witness' police statement to a fellow gang member with a handwritten note that stated "Check this out. Something must be done about this." After consulting with the police, the transcript was eventually mailed, and the witness was subsequently murdered. (Carver County Detention Center, Minnesota)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Gibson v. Brooks, 335 F.Supp.2d 325 (D.Conn. 2004). A prisoner brought a § 1983 action against prison officials, alleging failure to prevent an assault. The district court held that the prisoner stated an Eighth Amendment claim by alleging that the officials had actual knowledge of a threat to the prisoner, but that they intentionally or with deliberate indifference did not protect the

prisoner. The prisoner was attacked by another prisoner who was wielding a home-made knife with four razor blades attached to it. The prisoner alleged that the officials had prior knowledge of another assault and that he presented a threat to his life. (Osborn Correctional Institution, Connecticut)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Graham ex rel. Estate v. County of Washtenaw, 358 F.3d 377 (6th Cir. 2004). The estate of an arrestee, who died after secretly ingesting cocaine upon his arrest, brought a § 1983 action alleging that a county policy regarding provision of medical care to prisoners in the county jail contributed to the arrestee's death. The district court granted summary judgment in favor of the county and the estate appealed. The appeals court affirmed, finding that the county policy of giving responsibility for the provision of medical care to its contractual medical provider, was not the cause of the alleged unconstitutional denial of adequate medical care to the arrestee. The court noted that even if the policy required jail personnel to defer all medical decisions to the medical provider's employees, and even if the medical care received by the arrestee constituted deliberate indifference, there was no showing that the county policy was the moving force behind the violation. (Washtenaw County Jail, Michigan)

U.S. District Court
UNLAWFUL DETEN-
TION

Green v. Baca, 306 F.Supp.2d 903 (C.D.Cal. 2004). An arrestee sued a county sheriff, seeking damages for his alleged over-detention. The district court denied summary judgment for the sheriff, in part. The court held that fact issues as to the reasonableness of a twelve and one-half hour delay, between receipt of an order authorizing release of the arrestee and the execution of the order, precluded summary judgment. The court found that Fourteenth Amendment due process standards, rather than the Fourth Amendment search and seizure principles, governed the question of whether the constitutional rights of the arrestee were violated when, following a legal arrest for a parole violation, he was detained for several days after a hearing that ended with a determination that he had not violated parole. (Los Angeles County Jail, California)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

Greene v. Bowles, 361 F.3d 290 (6th Cir. 2004). An inmate who was a pre-operative male-to-female transsexual who was incarcerated in a prison for males, brought a § 1983 action against corrections officials, alleging deliberate indifference to her safety. The district court granted summary judgment in favor of a warden and the inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by fact issues as to whether the warden knew of the risk presented when the transsexual inmate was housed with an inmate considered to be a predatory inmate, and whether the warden knew of that inmate's status as a predatory inmate. The court noted that the liability of the warden was not precluded by a jury verdict against subordinate officials who were found not liable. (Warren Correctional Institution, Ohio)

U.S. Appeals Court
PROTECTION FROM
HARM

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

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

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. 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. Appeals Court
PRISONER ON PRISONER ASSAULT
SEXUAL ASSAULT
- 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. District Court
PRISONER SUICIDE
- Kelley v. County of Wayne, 325 F.Supp.2d 788 (E.D.Mich. 2004). A pretrial detainee's survivor brought a civil rights action against two deputy marshals, alleging they were deliberately indifferent to a detainee's serious medical needs stemming from his heroin withdrawal, and that they proximately caused his suicide. The district court granted summary judgment in favor of the deputy marshals. The court held that the failure of the deputy marshals to notify county authorities who had the resources to care for the inmate, that the detainee was suffering from heroin withdrawal, did not create a known risk of suicide or other serious harm. The court noted that the suicide occurred more than four days after the detainee's arrest, and the deputy marshals did not know of any correlation between heroin withdrawal and suicide. According to the court, the deputy marshals' failure to comply with a judge's instructions to transport the detainee to a particular detention center so that the detainee could be treated for his heroin withdrawal did not manifest deliberate indifference to the detainee's serious medical needs, because had the marshals taken the detainee to the requested center, the detainee either would not have been accepted or, if accepted, would not have been treated due to a lack of treatment resources at that institution. (Wayne County Jail, Michigan)
- U.S. Appeals Court
PRISONER ON PRISONER ASSAULT
- Montez Estate of Hearlson v. U.S., 359 F.3d 392 (6th Cir. 2004). The administratrix of the estate of a murdered federal inmate brought a negligence claim against the United States under the Federal Tort Claims Act (FTCA). The district court dismissed the case and the administratrix appealed. The appeals court affirmed. The appeals court that the allegations in the complaint were insufficient to rebut the presumption that prison officials' decisions regarding the inmate's safety at the time of his death were of the type that could be said to be grounded in Bureau of Prisons (BOP) policy, and thus the FTCA's discretionary function exception shielded the United States from liability for the inmate's death. The court noted that applicable statutes and regulations gave the BOP discretion in deciding how to accomplish its stated objectives and to decide when disciplinary action is necessary. (Federal Medical Center, Lexington, Kentucky)
- U.S. Appeals Court
PRISONER ON PRISONER ASSAULT
- Nei v. Dooley, 372 F.3d 1003 (8th Cir. 2004). Inmates brought a civil rights action against a warden and other prison officials claiming that their Eighth Amendment rights were violated by exposure to an HIV-positive inmate who assaulted and threatened to infect them. The district court denied the defendants' motion for summary judgment and the defendants appealed. The appeals court affirmed, finding that summary judgment was precluded by a fact issue as to whether prison officials knew that the inmate was infected with AIDS, that the inmate was threatening to infect other inmates and was engaging in assaultive behavior towards the inmates, and that they failed to respond reasonably to that risk. The court also held that the inmates stated a claim that they were retaliated against for filing a civil rights lawsuit. (Mike Durfee State Prison, South Dakota)
- U.S. Appeals Court
TRANSPORTATION
PROTECTION FROM
HARM
- Parrish Ex Rel Lee v. Cleveland, 372 F.3d 294 (4th Cir. 2004). The personal representative of the estate of an arrestee who died in police custody sued police officers, alleging they were deliberately indifferent to the risk of serious physical harm to the arrestee, in violation of the Fourteenth Amendment. The district court denied the officers' motion for summary judgment and the officers appealed. The appeals court reversed and remanded with instructions. The appeals court held that the officers were entitled to qualified immunity. The plaintiffs alleged that the officers were deliberately indifferent to the risk of asphyxiation when they placed a "spit mask" over the intoxicated arrestee and he vomited into it. The arrestee had been taken into custody on suspicion of being drunk in public and was placed handcuffed in the back of a police van for transportation to a detention facility that had medical care available for intoxicated detainees. The inmate died from aspiration of gastric content and positional asphyxia. (Fairfax County Police Department, Virginia)
- U.S. Appeals Court
PRISONER ON PRISONER ASSAULT
- Pierson v. Hartley, 391 F.3d 898 (7th Cir. 2004). An inmate brought a § 1983 action against prison officials for failing to protect him from an assault by another inmate. Following a jury verdict in favor of the inmate, the district court entered judgment as a matter of law in favor of the officials. The inmate appealed. The appeals court reversed and remanded. The court held that evidence was sufficient to create a fact issue for the jury as to whether officials disregarded risk to the inmate by assigning the assailant to a low-security dorm and allowing him to remain there following his weapons conviction in a prison disciplinary system. According to the court, the officials probably reviewed a letter from a county sheriff warning of the assailant's aberrant behavior and calling him an escape and assault risk, and the officials were likely aware of the assailant's disciplinary conviction of weapon possession. The court also found that the officials

knew that the assailant had neither one year in the general prison population nor ten years without any serious convictions of conduct violations, as required by prison policy for placement in a low-security level dorm. (Indiana State Prison)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

Riccardo v. Rausch, 375 F.3d 521 (7th Cir. 2004). A prisoner brought a civil rights suit against a state prison guard for assigning a new cellmate who sexually assaulted the prisoner. Following a jury trial, judgment was entered in the inmate's favor and the jury awarded \$1.5 million in compensatory damages. The guard appealed. The appeals court reversed, finding that evidence was insufficient to show that the guard who assigned the cellmate knew or deliberately disregarded the fact that his actions subjected the prisoner to a substantial risk of serious harm. (Centralia Correctional Center, Illinois)

U.S. District Court
SUICIDE

Stewart ex rel. Estate of Stewart v. Waldo County, 350 F.Supp.2d 215 (D.Me. 2004). The estate of a deceased inmate filed a § 1983 action alleging that a county violated the inmate's constitutional right to medical care and supervision, and asserting a wrongful death claim. The district court granted summary judgment in favor of the defendants. The court held that the officials' knowledge that the inmate was intoxicated did not demonstrate deliberate indifference to suicide risk. State and county policies and procedures required constant monitoring of intoxicated individuals, but the court found that the officials had no subjective knowledge that the inmate was suicidal or at risk for any reason. The court noted "despite the inmate's high blood alcohol content, he was functioning and coherent enough to understand directions and walk unassisted." The inmate hanged himself shortly after admission to the jail. Jail staff checked on the inmate at least every fifteen minutes before his death. (Waldo County Jail, Maine)

U.S. District Court
WRONGFUL DEATH

Stiltner v. Crouse, 327 F.Supp.2d 667 (W.D.Va. 2004). The father of a pretrial detainee who committed suicide in jail brought a § 1983 action against jailers. The district court granted summary judgment in favor of the jailers. The court held that the jailers were not deliberately indifferent to the substantial risk of harm to the detainee, and that they were not negligent in their handling of the detainee. The 39-year-old detainee had been arrested for suspicion of operating a vehicle under the influence of drugs and was waiting for her bond to be posted at a county jail. She was placed in a holding cell. Several hours later jailers discovered that she was unconscious. After attempts to resuscitate her were unsuccessful she was transported to a local hospital where she was pronounced dead. An autopsy showed that her death was caused by either self-hanging or strangulation by another person. According to the court, the detainee did not request medical aid from the jail nurse who saw her initially, and there was no indication to jailers that she might be a danger to herself. (Buchanan County Jail, Virginia)

U.S. District Court
PRISONER SUICIDE

Strickler v. McCord, 306 F.Supp.2d 818 (N.D.Ind. 2004). A pretrial detainee sued jail officials under § 1983, alleging they were deliberately indifferent to his serious medical needs. The district court granted summary judgment in favor of the defendants. The court held that although the jail officials allegedly placed the inmate on a suicide watch, noted that the detainee hid razor blades and medication in his cell, observed that the detainee had tried to cut himself, and saw the detainee draw pictures expressing sadness, the detainee could not demonstrate that the officials were aware of a substantial risk that he would attempt suicide. The detainee had been arrested for driving under the influence of alcohol and his car contained whiskey, a shotgun and a suicide note. The detainee subsequently attempted suicide by cutting his arm, but jail staff detected his condition and provided the detainee with medical treatment. (Miami County Jail, Indiana)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Thompson v. Spears, 336 F.Supp.2d 1224 (S.D.Fla. 2004). A prisoner brought an action against a county and a jail official, alleging deliberate indifference to his safety, negligent supervision, and negligent infliction of emotional distress. The district court granted summary judgment in favor of the defendants. The court held that a lack of monitoring devices in jail cells did not pose an objectively substantial risk of harm to the inmate, particularly in light of the fact the state Model Jail Standards did not require cameras. The court found that the inmate presented no evidence that the officer posts were located so far that officers could not hear calls for help. The court held that the county was not liable under § 1983, even if jail officers did not actually follow the county policy of making hourly walk-throughs to monitor cells, where there was no evidence that the county had officially sanctioned or ordered the officers to disregard the county policy. The prisoner had been temporarily transferred from a state prison to the county jail in order to be involved in a family court matter. The inmate, who was from Jacksonville, Florida, alleged that he was severely beaten by other inmates for over two hours, after the Miami Dolphins beat the Jacksonville Jaguars in a football game. (Pretrial Detention Center, Miami-Dade County, Florida)

U.S. Appeals Court
PRISONER SUICIDE

Turney v. Waterbury, 375 F.3d 756 (8th Cir. 2004). A mother brought a civil rights action to recover damages related to the in-custody suicide of her son. The district court granted summary judgment in favor of the defendants and the mother appealed. The appeals court affirmed in part, and reversed in part and remanded. The appeals court held that the sheriff was not entitled to qualified immunity, where the sheriff knew of, but did not investigate, the arrestee's earlier suicide attempt at a jail from which he was transferred, did not permit a jailer to complete the

arrestee's intake form, placed the arrestee in a cell alone with a bed sheet and exposed ceiling bars, and ordered the jailer not to enter the arrestee's cell without backup and yet left the jailer as the only staff member on duty at the jail. Before the arrestee was transferred to the jail in which he committed suicide, he had told jail staff that "he was going to hang it up" and shortly thereafter he was found in his cell with a bed sheet tied around his neck. During his processing into the next jail he told staff he did not want to return to prison, and that he would die and take someone with him if he received more than a 15 year sentence. The court held that training provided to county officials was not inadequate, where the county provided manuals that informed police officers how to recognize and respond to suicide risks. (Bennett Co. Jail, S.D.)

U.S. Appeals Court
SUICIDE

Wever v. Lincoln County, Nebraska, 388 F.3d 601 (8th Cir. 2004). A personal representative brought a civil rights action against a county and county sheriff alleging that an arrestee's Fourteenth Amendment rights were violated. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The appeals court affirmed. The court held that the arrestee had a clearly established Fourteenth Amendment right to be protected from the known risks of suicide, and two prior suicides in the county jail should have put the sheriff on notice that his suicide prevention training needed revision. The court held that the representative stated a supervisory liability claim under the due process clause, noting that a supervisor may be held liable under § 1983 if a failure to properly supervise and train an employee causes a deprivation of constitutional rights. (Lincoln County Jail, Nebraska)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Whiting v. Marathon County Sheriff's Dept., 382 F.3d 700 (7th Cir. 2004). A prisoner brought a suit against a sheriff's department, jail officials and guards for allegedly violating her Eighth Amendment rights. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed, finding that jail officials who had no knowledge of a no-contact order prohibiting a second inmate from contacting the prisoner, were not deliberately indifferent to a substantial risk of serious harm to the prisoner when they placed her in an interview room with the inmate and his attorney. While she was in the room with the inmate and his attorney, she was coerced and threatened. (Marathon County Jail, Wisconsin)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Yoder v. Ryan, 318 F.Supp.2d 601 (N.D.Ill. 2004). A state inmate and his family members brought an action alleging conspiracy to wrongfully imprison the inmate. The district court held that the absolute immunity of prosecutors did not apply at the motion to dismiss stage of the case. The inmate alleged that prosecutors conspired to have him assaulted by fellow inmates. (Illinois Department of Human Services)

2005

U.S. District Court
FAILURE TO PROTECT TRANSPORTATION

Allah v. Goord, 405 F.Supp.2d 265 (S.D.N.Y. 2005). A state inmate who used a wheelchair brought a pro se action alleging failure of corrections officials to safely transport him to and from outside medical providers. The district court granted the defendant's motions for dismissal in part, and denied in part. The court held that the inmate's allegations with respect to the state corrections department were sufficient to establish a violation of the Americans with Disabilities Act (ADA). According to the court, corrections officials were not entitled to qualified immunity from liability under § 1983 for injuries sustained while being transported in an unsafe van, where their conduct amounted to more than an ordinary lack of due care for the prisoner's safety. The court held that their decision to place the inmate back in a wheelchair after he fell once demonstrated complete disregard for his safety. The inmate alleged that he suffered a "serious injury (to) his head, neck and back" when he fell to the floor of the van in question and suffered "unnecessary pain and discomfort, permanent disability, and mental distress." The van driver allegedly speeded and then stopped short on more than one occasion, and other wheelchair-using inmates had been injured in the same manner during transport. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
RIOT
MEDICAL CARE

Alsina-Ortiz v. Laboy, 400 F.3d 77 (1st Cir. 2005). The parent of a deceased inmate brought a § 1983 action against correctional administrators and staff, alleging Eighth Amendment violations in connection with a prison riot. The district court granted the defendants' motions for summary judgment and the parent appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that administrators who had no knowledge of a continuing pattern by guards of failing to report inmates' medical needs could not be held liable under § 1983 on the theory that their deliberate indifference to the threat that the guards neglect of inmates' medical needs violated the Eighth Amendment. The court found that summary judgment was precluded on the claim against a guard for deliberate indifference. The inmate suffered a head injury in a prison riot and later died of a brain inflammation. (Bayamon Prison, Puerto Rico)

U.S. Appeals Court
OFFICER ON PRISONER ASSAULT
USE OF FORCE

Bozeman v. Orum, 422 F.3d 1265 (11th Cir. 2005). The representative of the estate of a pretrial detainee who had died during a struggle with county correctional officers brought a § 1983 suit alleging use of excessive force and deliberate indifference to medical needs. The district court granted summary judgment for several defendants but denied summary judgment for corrections

officers. The officers appealed. The appeals court affirmed. The court held that the officers' alleged conduct in subduing the detainee was actionable as excessive force and that the officers were not entitled to qualified immunity. The court also held that the officers' alleged conduct following the struggle-- waiting 14 minutes before summoning medical assistance even though the detainee appeared lifeless-- was actionable as deliberate indifference and the officers were not entitled to qualified immunity. The court noted that the law defining excessive force was clearly established at the time of the incident, and the officers should have known that continuing to apply force to the unruly detainee after he had given up his struggle was not acceptable. (Montgomery County Detention Facility, Alabama)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

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
PRISONER ON PRIS-
ONER ASSAULT

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. District Court
PRISONER ON PRIS-
ONER ASSAULT

Collins v. County of Kern, 390 F.Supp.2d 964 (E.D.Cal. 2005). An inmate brought a § 1983 action against a county and a sheriff's department, stemming from an attack by other inmates while he was incarcerated. A fight had erupted in a jail housing unit between Black and Hispanic inmates and the inmate was injured. The district court granted summary judgment in favor of the defendants. The court held that inmate failed to establish that department officials knew of and disregarded a risk of attack when they moved the inmate to another jail unit. At the time of the move, the inmate did not inform anyone of safety concerns or segregation issues due to a purported gang affiliation. The court found that officials took prompt action to stop the fight, secure the area, and ensure prompt medical treatment for the inmate. The court noted that a "prison official need not believe to [a] moral certainty that one inmate intends to attack another at [a] given place at time certain before he is obligated to prevent such an assault." According to the court, before being required to take action, an official must have more than a mere suspicion that an attack will occur. (Lerdo Pre-Trial Facility, Kern County, California)

U.S. Appeals Court
SUICIDE

Cook Ex Rel. Tessier v. Sheriff of Monroe County, 402 F.3d 1092 (11th Cir. 2005). The personal representative of the estate of a pretrial detainee who committed suicide while incarcerated brought an action against a sheriff, in his official capacity, asserting claims for deliberate indifference to the detainee's medical needs in violation of § 1983, negligent training and supervision of jail employees, and vicarious liability for the employees' negligence. The district court excluded the representative's expert witness testimony, precluded reference to other suicides at the facility, and granted judgment as a matter of law for the sheriff. The representative appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court acted within its discretion in excluding evidence of other suicides at the jail. The court found that the plaintiff failed to establish that the detainee's suicide was foreseeable to the sheriff and therefore any deficiencies in the sheriff's training or supervision did not rise to the level of deliberate indifference. But the court held that evidence was sufficient to support a jury verdict on the plaintiff's claim that the sheriff was vicariously liable under state law for employees' alleged negligence. The court noted that the detainee made two written requests to see a psychiatrist, one on each of the two days immediately preceding his suicide, and that the detainee stated in one request that he was "mentally sick" and asked to see the psychiatrist "as soon as possible." Three deputies observed the detainee as nervous and anxious, and one specifically observed the detainee apparently having an anxiety attack and complaining of chest pains. (Monroe County Detention Center, Florida)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

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
PRISONER ON PRIS-
ONER ASSAULT
STAFFING

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
PRISONER SUICIDE

Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who had committed suicide in a holding cell brought an action against a city and officers, alleging deliberate indifference to the detainee’s serious medical needs. The district court granted summary judgment for the defendants. The court held the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide and had not threatened or attempted suicide. The court noted that the detainee’s intoxication was not, by itself, an indication of a suicidal tendency. The court found the city was not deliberately indifferent, where it had no history of numerous suicides by detainees, the city had policies for removing harmful items from detainees, and the city placed a video monitor in a cell following a previous suicide. (Scranton Police Department, Pennsylvania)

U.S. District Court
OFFICER ON PRIS-
ONER ASSAULT

Davis v. Carroll, 390 F.Supp.2d (D.Del. 2005). An inmate brought a § 1983 action against prison personnel alleging violations of his Eighth Amendment rights. The district court denied the defendants’ motion to dismiss. The court held that the inmate stated a claim of excessive force with his allegations that correctional officers harmed him on two different occasions while he was handcuffed. The court also found that the inmate stated a claim for deliberate indifference to his serious medical needs. The inmate alleged that a deputy warden wanted to “just stitch him up” when he was hit in the head by correctional officers and that it was only at the insistence of a nurse that an ambulance was called. The inmate also alleged that after he received treatment for head injuries he was moved from an infirmary, despite needing more medical treatment, and that no one came to check on him for several days after he underwent brain surgery. The court also found that the inmate stated a claim for supervisory liability with his allegations that correctional officers planned his beating and encouraged him to act out, and that a deputy warden witnessed the attack and took no action to stop it or punish the officers who were involved. The inmate also alleged that a sergeant stood by as correctional officers harmed him while he was handcuffed. (Delaware Correctional Center)

U.S. District Court
SUICIDE

Drake ex rel. Cotton v. Koss, 393 F.Supp.2d 756 (D.Minn. 2005). The legal guardian for an incapacitated person, who attempted to commit suicide while he was a pretrial detainee in a county jail, and the state human services department sued a county and various officials under § 1983 alleging Eighth and Fourteenth Amendment violations and a state law claim for negligence. The district court granted summary judgment in favor of the defendants. The court held that the officials did not act with deliberate indifference in failing to recognize and respond to the risk that the detainee was suicidal, even assuming there was a 72-minute gap between the last time the detainee was checked and when he was found. According to the court, the officials did not know that the detainee presented a substantial risk of suicide, based on a physician’s reports describing the detainee’s depression as only “mild” or “situational.” There was nothing in the reports to suggest that anti-anxiety medication would have helped prevent the detainee’s depression and attempted suicide. The court held that the county was not shown to have any official policy or custom of overcrowding or understaffing that played a role in the detainee’s attempted suicide. The court held that the officials acted with discretion with respect to their placement and treatment of the detainee, and in accordance with a physician’s orders, and they promptly took the detainee to the hospital when they discovered he had harmed himself, and were therefore entitled to official immunity as to the negligence claims. (McLeod County Jail, Minnesota)

U.S. District Court
SUICIDE

Estate of Adbollahi v. County of Sacramento, 405 F.Supp.2d 1194 (E.D.Cal. 2005). Representatives of the estates of two county jail detainees, and one inmate, who committed suicide while in their cells brought a § 1983 action. The district court granted summary judgment in favor of the defendants in part, and denied in part. The court held that the county was not liable for failing to train jail personnel in suicide prevention where the county had a policy of

periodic observation of cell occupants. The court noted that an officer, lacking knowledge that a detainee was suicidal, made no observations, and falsely entered on duty logs that he had done so. The court found that summary judgment was precluded by material issues of fact as to whether a jail commander ratified or encouraged the practice of “pencil-whipping,” which involved making false entries on records showing observations of cell occupants that were not actually made. The court held that summary judgment was precluded by material issues of fact as to whether the county knowingly established a policy of providing an inadequate number of cell inspections and of falsifying logs showing completion of cell inspections, creating a substantial risk of harm to suicide-prone cell occupants. The court ruled that the sheriff and jail commander had immunity under state law from liability claims that there were holes in the bunks that could be used for death by hanging, where use of the bunk holes for suicide was not foreseeable. The court held that summary judgment was precluded by material issues of fact as to whether a county jail nurse ratified, condoned, and encouraged the deliberately indifferent behavior of a social worker who conducted an allegedly perfunctory interview of an inmate who later committed suicide. The court found that summary judgment was precluded by material issues of fact as to whether a psychiatric services clinician satisfied applicable standards of care, under state law. (Sacramento County Jail, California)

U.S. Appeals Court
SUICIDE

Estate of Bradich v. City of Chicago, 413 F.3d 688 (7th Cir. 2005). The estate of an arrestee who hung himself while in a county jail brought an action alleging failure to protect the arrestee from the risk of suicide, and failing to react properly when the arrestee was discovered hanging. The district court granted summary judgment in favor of the defendants and the plaintiff appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that jail staff did not display deliberate indifference to a substantial risk of suicide by putting the intoxicated arrestee in a regular cell and allowing him to keep his civilian clothes, rather than placing him on a suicide watch or sending him to a hospital until he sobered up. The arrestee had been arrested numerous times had never attempted to injure himself, and he did not have a mental health history that implied any disposition toward suicide. The court found that the city could not be liable for jail staffs’ failure to comply with a rule requiring close monitoring of intoxicated prisoners, where the city’s policy requiring staff to check intoxicated prisoners every 15 minutes was adequate and there was no allegation that the city systematically failed to enforce its policies. The court noted that the record did not imply that the suicide rate in the city’s jail was abnormally high. The court held that summary judgment was precluded by a genuine issue of material fact as to whether three members of the jail staff acted with deliberate indifference by failing to seek outside assistance for ten minutes after finding the arrestee hanging in his jail cell. The court asked “Why did it take *all three* officers to provide unhelpful assistance? Two might have done what they could, while the third phoned for help (which would take only a minute) and then rejoined the others. Why did the two officers who lacked CPR training think that they should shout at a hanging prisoner rather than call for help? Why did the officer with CPR training not use his skills?” The arrestee had been booked and put in a cell at the city police stationhouse. (City of Chicago, Illinois)

U.S. Appeals Court
OFFICER ON PRISONER ASSAULT
USE OF FORCE

Estate of Moreland v. Dieter, 395 F.3d 747 (7th Cir. 2005). Family members of a county jail detainee who died in custody, brought a § 1983 action alleging the use of unnecessary and excessive force. The district court entered judgment, upon jury verdict, in favor of the family members and against county deputies, and awarded \$29 million in compensatory damages, and \$27.5 million in punitive damages. The parties appealed. The appeals court affirmed, finding that the punitive damages award was not excessive, where evidence showed that the deputies threw the detainee’s head against a concrete wall, discharged a can of pepper spray into his face when he was fully restrained, and repeatedly assaulted him, without attending to the detainee’s medical needs. The detainee died of a fatal hematoma caused by one of the head traumas inflicted by the deputies. The deputies lied to a jail nurse about the detainee’s injuries and filed false reports to conceal their wrongdoing. The court held that neither multiple prior incidents involving the use of pepper spray, nor alleged jail overcrowding, established that a sheriff was deliberately indifferent to a substantial risk of harm to the detainee. The detainee had been admitted to jail after he was arrested for driving under the influence. Shortly after his admission to the jail, the detainee provoked a confrontation with another detainee by directing racial slurs at him. Jail staff responded to the altercation with excessive force. (St. Joseph County Jail, Indiana)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Fisher v. Lovejoy, 414 F.3d 659 (7th Cir. 2005). A pretrial detainee brought a pro se § 1983 Fourteenth Amendment action against a corrections officer, alleging that the officer failed to protect the detainee from assault by other inmates of the facility. The district court entered summary judgment for the officer and the detainee appealed. The appeals court affirmed. The court held that the fact that the officer witnessed the stabbing of the detainee by another inmate did not render the officer deliberately indifferent to a second assault on the detainee that was perpetrated minutes later by several inmates. The court noted that the officer entered the room where the stabbing had occurred and attempted to restore order, found and confiscated a knife near the spot where he had observed the stabbing, which permitted the inference that the first assailant was unarmed. The officer did not identify the inmates who mounted the second attack

as participants in the first attack. The court held that the officer reasonably responded when he witnessed the stabbing of the detainee, precluding liability. At the time of the assaults, the officer had been assigned to “cross-watch” two separate housing units, one of which housed 48 inmates. He was required to walk back and forth between the two units’ dayrooms. When the first assault began the victim ran toward the locked dayroom door and saw the officer outside. He pushed an intercom button near the door and summoned help. The officer immediately called for assistance but was not able to enter the dayroom until it was unlocked by a central control post. By the time the door opened, approximately twenty officers were waiting to enter. (Cook County Department of Corrections)

U.S. Appeals Court
SEXUAL ASSAULT

Gonzales v. Martinez, 403 F.3d 1179 (10th Cir. 2005). A female inmate who was sexually assaulted at a county jail brought a civil rights action against the county, county sheriff and jail officials. The district court entered summary judgment in favor of the sheriff and the inmate appealed. The appeals court reversed and remanded, finding that summary judgment was precluded by a genuine issue of material fact as to whether the sheriff had the requisite knowledge of a substantial risk of harm to inmates because of conditions at the jail. The female inmate was sexually assaulted on more than one occasion by the jail administrator and a jail officer. The administrator and officer were suspended and were later charged with, and convicted of, the assaults. (Huerfano County Jail, Colorado)

U.S. Appeals Court
SUICIDE

Gray v. City of Detroit, 399 F.3d 612 (6th Cir. 2005). The personal representative of the estate of a pretrial detainee who had committed suicide while in a police cell at a hospital brought a § 1983 action alleging inadequate medical treatment and failure to adequately monitor the detainee. The district court granted summary judgment for the defendants and the personal representative appealed. The appeals court affirmed. The court held that the city could not be held liable for deliberate indifference given the absence of an obvious and clear suicide risk. The court concluded that an officer enjoyed qualified immunity because the detainee’s pre-suicide behavior did not give rise to a duty to monitor for suicide. The detainee had registered only physical complaints and had engaged in no self-injurious behavior at the hospital. The officer was not aware of, and could not be charged with knowledge of the detainee’s behavior prior to reaching the hospital, according to the court. The court found that the city could not be held liable for failure to adequately train its officers regarding suicides, where officers complied with city policies regarding medical care, including screening by an intake nurse at the hospital, and no previous inmate suicides had occurred in the hospital cells. Although the detainee had been destructive before he was transferred to the hospital--ripping a phone from his cell wall and breaking a sink and toilet-- the court noted that none of his destructive acts had been self-directed. (Detroit Receiving Hospital, Michigan)

U.S. District Court
SUICIDE

Harvey v. County of Ward, 352 F.Supp.2d 1003 (D.N.D. 2005). The surviving spouse of a jail inmate who died after a suicide attempt brought an action under § 1983 and state law, alleging deliberate indifference to the inmate’s known risk of suicide. The district court granted summary judgment in favor of the defendants. The district court held that the plaintiff failed to establish that the sheriff and jail administrator knew of the inmate’s potential risk of suicide. According to the court, evidence of conversations between the spouse and jail employees about the inmate’s suicide risk, an officer’s note that the inmate’s wife thought that they should keep an eye on the inmate, and another officer’s report that the inmate may have been trying to save up some of his medications to take at another time, was insufficient to establish that the sheriff and jail administrator knew of the inmate’s potential risk of suicide. The court found that the county was not deliberately indifferent to the training of its employees on inmate suicide prevention. The court held that the jail’s suicide prevention policy appeared reasonable and comprised an effort to prevent suicides, even if the policy had not been updated in recent years, and the jail was not accredited by the American Correctional Association (ACA). The court noted that the policy set forth a detailed list of factors to identify potentially suicidal inmates, set forth a procedure for identification and screening of inmates, and required ongoing training in the implementation of suicide prevention and intervention for all staff. (Ward County Jail, North Dakota)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Hearns v. Terhune, 413 F.3d 1036 (9th Cir. 2005). A state prison inmate brought a § 1983 action alleging violation of his Eighth Amendment rights related to an attack in prison, and inhumane conditions in a disciplinary segregation unit. The district court dismissed the action and the inmate appealed. The appeals court reversed and remanded. The court held that the inmate’s allegations stated a claim that prison officials failed to protect him from attacks by other inmates. The inmate had been beaten and stabbed in a prison chapel by inmates who belonged to another Muslim group. The inmate alleged that the officials knew that: numerous Muslim inmates had been subject to attack by a ruling Muslim group in the prison chapel; the chaplain knew that the ruling Muslim group was trying to steal prayer oil from other Muslim inmates; the chaplain informed the ruling group that he had secretly delivered the oil to another inmate; and the chaplain told the ruling group that the inmate did not follow the teachings of Muhammad. The inmate alleged that an officer was not present when he was attacked even though inmates were not allowed in the chapel without supervision. (Calipatria State Prison, California)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Hollenbaugh v. Maurer, 397 F.Supp.2d 894 (N.D. Ohio 2005). The estate of a pretrial detainee sued a city, county, and jail officials under § 1983 alleging the defendants violated the detainee's constitutional rights by failing to provide necessary medical care during his arrest and detention. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that summary judgment was precluded by material issues of genuine fact as to whether jail officials who dealt directly with the detainee and who had the opportunity to closely observe him, knew that the detainee was seriously ill. The court noted that although the detainee was allegedly intoxicated when he was arrested and brought to the county jail, he was adamant about his need for medical attention and his belief that he was suffering from a serious medical condition. The detainee died from a heart attack within a few hours of his arrest. (Wayne County Jail, Ohio)

U.S. District Court
OFFICER ON PRIS-
ONER ASSAULT

Johnson v. Wright, 423 F.Supp.2d 1242 (M.D. Ala. 2005). An arrestee sued an arresting officer, a volunteer riding with the officer, and county jail officers, claiming violation of his Fourth Amendment protections against false arrest and excessive force. The officer, volunteer and jail officers moved for summary judgment. The district court held that the jail officers were not entitled to qualified immunity due to material issues of fact, as to whether the jail officers beat the arrestee without provocation while he was in his cell. According to the arrestee, officers dragged him out of his cell and put him in some type of harness chair, and he was in handcuffs during the entire time he was being beaten at the jail and he was still in handcuffs when he was strapped into the harness chair. The arrestee alleged that officers continued to beat him after he was strapped into the harness chair. (Chilton County Jail, Alabama)

U.S. District Court
SEXUAL ASSAULT
JUVENILES

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. (Department of Youth Services, Chalkville Campus, Alabama)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Little v. Shelby County, Tenn., 384 F.Supp.2d 1169 (W.D. Tenn. 2005). An inmate brought a § 1983 action against a county and sheriff, alleging that he had been raped in jail in violation of his Eighth Amendment rights. The county stipulated to liability and an order of injunctive relief was issued. Later, the district court found the county in contempt, and the county sought to purge itself of the contempt finding. The court entered a purgation order. The court held that the county and sheriff complied with the Eighth Amendment and purged themselves of contempt through the adoption of a structured reform to correct conditions that included violence, rape and gang control among inmates. In reaching its conclusion, the court considered whether officials took all reasonable steps within their power to comply with the order, which included whether they marshaled their own resources, asserted their highest authority, and demanded the results needed from subordinate persons and agencies in order to effectuate the course of action required by the order. The court praised the county, noting that it had adopted a focused, systemic and information-driven structural reform based on critical expert assessment of essential institutional functions. The county adopted a 14-point remedial scheme that included implementing direct supervision management of inmate cellblocks, improving population management, collecting and utilizing data, and installing an objective inmate classification system. (Shelby Co. Jail, Tenn.)

U.S. District Court
PROTECTION FROM
HARM

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

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

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
PRISONER SUICIDE

Mann ex rel. Terrazas v. Lopez, 404 F.Supp.2d 932 (W.D.Tex. 2005). Representatives of the estates of two detainees who had committed suicide while confined brought an action against a sheriff and jail officers, alleging failure to supervise and failure to train. The district court found that the sheriff was entitled to qualified immunity for failing to prevent the detainees' suicides, where there was no evidence that the sheriff was personally aware of any suicidal thoughts the detainees might have had and did not personally direct any actions involving the detainees during their incarceration. The court ordered further proceedings to determine if the sheriff's failure to modify his policies regarding potentially suicidal detainees was an intentional choice, or merely unintentionally negligent oversight. One inmate was known to have mental health problems and was housed in a mental health unit that provided a 1 to 18 officer to inmate ratio, compared to the 1 to 48 ratio required by state standards. The inmate hanged himself using a torn-up bed sheet. The other inmate was being held in a new detox cell and was found hanging four minutes after she had been visually observed by an officer. She also used a bed sheet to hang herself. (Bexar County Adult Detention Center, Texas)

U.S. District Court
PRISONER SUICIDE

Martin v. Somerset County, 387 F.Supp.2d 65 (D.Me. 2005). The representative of the estate of a county jail inmate who hanged himself in his cell, sued the county, sheriff and jail officials alleging violation of the inmate's federal and state rights. The district court granted summary judgment in part for the defendants, and denied it in part. The court held that summary judgment was precluded by fact issues as to whether jail officials displayed deliberate indifference to the inmate in violation of the Eighth Amendment, prior to the hanging. The court noted that it was necessary to determine if a jail shift supervisor and a control room officer subjectively knew that the inmate was suicidal and whether they unreasonably disregarded the risk. The court found that an officer who merely assisted in cutting down the inmate was not liable for deliberate indifference, where he brought a seat belt cutter to the cell on orders of the shift supervisor, and when it failed to release the sheet the inmate had used to hang himself, he brought scissors. The court found officials did not show deliberate indifference after the hanging when they did not apply cardio-pulmonary resuscitation, noting that the inmate was warm and appeared to be breathing, and it was only a few minutes before an emergency medical team arrived. The court held that the county did not show deliberate indifference to the suicide-prone inmate when it established a suicide prevention protocol, noting that the thrust of this claim was that the officials failed to follow the protocol in supervising the inmate. (Somerset County Jail, Maine)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Merrriweather v. Marion County Sheriff, 368 F.Supp.2d 875 (S.D.Ind. 2005). A county jail detainee who was beaten and raped by fellow detainees sued a sheriff, claiming deprivation of his due process rights and negligence. The district court denied the sheriff's motion to dismiss the action. The court found fact issues as to whether the sheriff had shown deliberate indifference to the risk posed to the detainee by housing him with detainees who had a record of prior violence, and whether the sheriff had immunity from the negligence claim under state law. The court also found material issues of fact as to whether the level of violence in the juvenile detention portion of the jail was significant and obvious, and whether the sheriff's policies and procedures were systematically inadequate. The court noted that alleged material improvements in procedures for protecting jail detainees from assault, implemented after the detainee was beaten and raped by fellow detainees, were irrelevant in determining whether the due process rights of the detainee were violated. (Marion County Jail, Indiana)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Mohamed v. Tattum, 380 F.Supp.2d 1214 (D.Kan. 2005). A federal prisoner brought a pro se civil rights action against a prison official, seeking monetary damages for injuries allegedly resulting from the official's failure to protect him from an attack by another inmate. The district court granted summary judgment in favor of the defendant. The court held that the official was not liable for deliberately failing to protect the prisoner, absent evidence that the official had notice or knowledge of a threat against the prisoner. The court excluded affidavits from other prisoners who stated that the prisoner had told them that he had delivered notes to the official informing him that his cellmate planned to injure him. (United States Penitentiary, Leavenworth, Kansas)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Myles v. U.S., 416 F.3d 551 (7th Cir. 2005). A federal inmate brought a suit against the government seeking compensation under the Federal Tort Claims Act (FTCA), alleging that officers failed to protect him from being beaten by other inmates. The district court dismissed the suit as untimely and the inmate appealed. The appeals court affirmed, finding that the complaint could not be deemed to assert *Bivens* claims. (Federal Bureau of Prisons, Terre Haute, Indiana)

U.S. District Court
OFFICER ON PRISONER ASSAULT

Orwat v. Maloney, 360 F.Supp.2d 146 (D.Mass. 2005). An inmate brought a § 1983 action against correctional officers and officials and a state corrections department, alleging violations of the First, Eighth and Fourteenth Amendments and various state laws. The district court granted summary judgment for the defendants in part, and denied it in part. The court held that an officer was not liable for violating the Eighth Amendment by failing to intervene to protect an inmate from an attack by another officer, where the officer had no reasonable opportunity to prevent the other officer's initial blow to the inmate, and thereafter attempted to intervene. The court found that summary judgment was precluded by genuine issues of material fact as to whether a correctional officer struck the inmate, not to restore or maintain discipline, but maliciously and sadistically to cause harm to him, and whether the officer used more force than was necessary. The officer had hit the inmate in the face and broken his jaw. (MCI-Cedar Junction, Massachusetts)

U.S. District Court
MEDICAL CARE

Patrick v. Lewis, 397 F.Supp.2d 1134 (D.Minn. 2005). The heirs and next of kin of an arrestee who died while in detention brought an action alleging that officers violated the arrestee's Fourth and Fourteenth Amendment rights by failing to seek medical attention for the arrestee after he was involved in a motorcycle accident. The district court granted summary judgment on the basis of qualified immunity for the officers in part, and denied it in part. The court held that officers did not violate the Fourth Amendment in failing to summon medical aid during the booking process, noting that the arrestee refused medical attention after being treated by paramedics at the scene of the accident. The court found that an overnight jailer who made cell checks periodically throughout the night was not deliberately indifferent to the arrestee's serious medical needs, even though the arrestee died in his cell sometime in the early morning from complications of a blunt force chest injury. The court noted that there was no indication that the jailer heard the arrestee's alleged call for help during her overnight shift, or knew that the arrestee had serious injuries. The court denied summary judgment on the claim that the jailer was deliberately indifferent, finding it was precluded by a genuine issue of material fact as to whether the jailer delayed in summoning aid for the arrestee after she discovered that he appeared not to be breathing. (Brooklyn Park Police Department, Minnesota)

U.S. District Court
PRISONER SUICIDE

Perez v. Oakland County, 380 F.Supp.2d 830 (E.D.Mich. 2005). The father and personal representative of the estate of an inmate brought a suit under § 1983, alleging that the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring when the inmate was being held in the county jail, leading to the inmate's suicide. The district court held that the county did not act with deliberate indifference in allowing the inmate caseworker, who allegedly lacked sufficient medical background or expertise, to make decisions affecting the health care needs of the inmate. The court noted that the challenged practice was widespread, with the "vast majority" of county jails allowing employees who were not psychiatrists, but who had been trained in suicide detection and prevention, to make determinations whether inmates were suicidal or potentially suicidal.

The court found that the father failed to establish that deputies actually perceived that the inmate faced a substantial risk of serious harm if they conducted their rounds 16 minutes further apart than mandated under jail policy.

The court held that the father failed to establish that a deputy actually perceived a risk of placing the inmate in a single cell. The inmate had been placed in a single cell and no special watch status had been ordered by the inmate caseworker, who was responsible for cell assignments. The court held that the caseworker was entitled to qualified immunity because it was not established at the time of the inmate's suicide that the caseworker's actions of making determinations concerning the inmate's cell assignments, without first consulting the inmate's physician or psychiatrist, would violate the inmate's Eighth Amendment rights. According to the court, the jail psychiatrist did not disregard a known and serious medical need, where evidence demonstrated that even though the psychiatrist knew that the inmate was not taking his medication, he determined through his own direct evaluation that the inmate was suicidal.

The court found that allegations that the sheriff failed to ensure that the county's deputies enforced and followed the law could not sustain a § 1983 claim absent evidence that the sheriff himself engaged in active unconstitutional behavior by directly participating, encouraging, authorizing, or acquiescing in the allegedly offending conduct of the sheriff's deputy. (Oakland County Jail, Michigan)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT STAFFING

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
PRISONER ON PRIS-
ONER ASSAULT

Rivera-Quinones v. Rivera-Gonzalez, 397 F.Supp.2d 334 (D.Puerto Rico 2005). Relatives of an inmate who died while incarcerated in a Puerto Rico state prison brought a § 1983 claim alleging failure to provide the inmate with adequate protection from attacks by other inmates. The district court denied the defendant prison officials' motion to dismiss. The court held that the Prison Litigation Reform Act (PLRA) exhaustion requirement did not apply to the § 1983 action brought by relatives of the inmate, since the inmate was no longer confined for the purposes of PLRA. The court held that the relatives stated a § 1983 claim based on deliberate indifference to the inmate's security and medical needs. The inmate was forcibly intoxicated with morphine by fellow prisoners that eventually caused his death by overdose. According to the court, prison officials' failure to classify prisoners to avoid harm, and inadequate supervision, allowed practices that resulted in danger to the lives and body integrity of prisoners. The officials allegedly had sufficient information from which an inference of substantial risk of serious harm to prisoners could be drawn, and there was a shortage of medical staff and equipment. (Puerto Rico)

U.S. Appeals Court
SUICIDE

Snow ex rel. Snow v. City of Citronelle, AL., 420 F.3d 1262 (11th Cir. 2005). The administrator of the estate of a pretrial detainee who had committed suicide while in jail brought an action against a city, its mayor and several police department employees, alleging violations of the detainee's rights under the Eighth and Fourteenth Amendment and asserting a state wrongful death claim. The detainee had been arrested for driving under the influence of alcohol or drugs. The district court granted summary judgment for the defendants on the federal claims and dismissed the state law claims. The administrator appealed. The appeals court affirmed in part, reversed in part, vacated in part, and remanded. The court held that police department employees who lacked a subjective knowledge of the detainee's potential for suicide were not liable, in their individual capacities, for any constitutional violations. The court noted that the employees had no knowledge of either the detainee's emergency room records showing that the detainee told emergency room staff she had attempted suicide four times before, or of doctor's notes showing that the detainee had suicidal ideation. The court denied summary judgment for one police officer, finding fact issues as to whether he believed that there was a strong risk that the detainee would attempt suicide and did not take any action to prevent her suicide. According to the court, the city's alleged lack of a suicide policy did not cause any constitutional violation. (City of Citronelle Jail, Alabama)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Thomas ex rel. Smith v. Cook County Sheriff, 401 F.Supp.2d 867 (N.D.Ill. 2005). The administrator of a detainee's estate brought an action arising from the death of the detainee at the jail, allegedly due to inadequate medical attention. The district court granted the defendants' motions to dismiss in part, and denied in part. The court held that the administrator had standing to sue on behalf of the surviving spouse and next of kin, and that the allegations were sufficient to state most of the § 1983 claims. The court found that allegations of conspiracy were insufficient to state a claim. The court held that the allegations were sufficient to remove the shield of immunity under a state tort immunity act by pleading "willing and wanton conduct." According to the court, allegations that an institutional policy, whether an express policy or a widespread practice, led to the death of the detainee due to deliberate indifference to the detainee's medical needs, were sufficient to state a § 1983 claim. The detainee was suffering flu-like conditions at the time of arrest and he complained of these symptoms to medical personnel during his initial screening at the jail. Three days later his condition worsened and he requested medical attention from several officers, who refused and told him he was just "dopesick." The next three days the detainee, and fellow detainees on his behalf, requested medical attention and their requests were denied by officers and medical technicians, and even made written requests. The detainee was found unconscious on the floor of his cell on the seventh day after his admission and he died of meningitis later that day. (Cook County Department of Corrections, Illinois)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Torres Garcia v. Puerto Rico, 402 F.Supp.2d 373 (D.Puerto Rico 2005). A prisoner filed a civil rights suit claiming violations of his constitutional rights. The district court granted the defendants' motions to dismiss in part, and denied in part. The court held that the prisoner stated a due process claim against prison officials based on his transfer from a minimum security unit to a maximum security unit in violation of a prison rule that required a timely post-transfer hearing, but noted that the prisoner could only seek prospective injunctive relief. The court found that the prisoner's expectations of prison employment did not amount to a property or liberty interest entitled to due process protection, noting that earning wages while incarcerated was a privilege, not a right. The court held that the inmate failed to state an Eighth Amendment claim that prison officials failed to afford him adequate protection from an attack by other inmates,

absent an allegation that he had sustained any injury at their hands. (Puerto Rico Department of Corrections, Bayamon Institutions Nos. 292 and 501)

U.S. Appeals Court
OFFICER ON PRIS-
ONER ASSAULT

U.S. v. Serrata, 425 F.3d 886 (10th Cir. 2005). Former correctional officers who were convicted in federal court of offenses related to an assault on an inmate and subsequent obstruction of justice appealed their convictions. The appeals court affirmed in part, vacated in part, and remanded. The court held that evidence was sufficient to support the conviction of one officer for failing to intervene to prevent an assault. Four eyewitnesses testified that the officer stood within arm's reach and watched another officer attack an inmate who was lying defenseless on the floor with his hands cuffed behind his back. The inmate was examined by a physician who observed that he was groggy, had abrasions on his head, neck, back, ear and eye, and had a black boot scuff mark on the right side of his head. The inmate lost consciousness and was taken to a hospital, but he suffered no permanent physical injuries or impairments as a result of the attack. The court held that the boots worn by an officer when he kicked or stomped on an inmate's head constituted dangerous weapons. The appeals court found that the district court abused its discretion in granting a downward departure under sentencing guidelines based on extraordinary family circumstances, employment records and community service. One officer was sentenced to 51 months, another to 24 months, and a third to 78 months imprisonment. (Lea County Correctional Facility, New Mexico)

U.S. District Court
OFFICER ON PRIS-
ONER ASSAULT

Valdes v. Crosby, 390 F.Supp.2d 1084 (M.D.Fla. 2005). The estate of an inmate who died in prison after an alleged beating by correctional officers brought a § 1983 action against prison officials and prison nurses. The district court granted summary judgment in favor of the defendants in part, and denied it in part. The court found that summary judgment was precluded by a genuine issue of material fact on a supervisory liability claim against a warden. The court also held that there were genuine issues of material fact as to whether inmate abuse at the hands of prison officers occurred with sufficient regularity to demonstrate a history of widespread abuse at the prison, and as to whether the prison warden established customs and practices that resulted in deliberate indifference to violations of inmates' constitutional rights. According to the court, it was clearly established at the time of the inmate's death that the warden could face liability under § 1983 predicated on his failure to take reasonable steps in the face of a history of widespread abuse that created a known substantial risk of serious harm to inmates. The court found that a prison inspector was not liable on a § 1983 supervisory liability claim, since the inspector was neither responsible for, nor had authority to prevent or correct problems relating to abusive officers. The court concluded that nurses were not liable under § 1983 where a nurse's physical examination of the inmate following alleged abuse by officers during the extraction of the inmate from his cell revealed that the inmate suffered only minor injuries consistent with those seen by medical personnel in prisons following cell extractions. The court held that any delay in the nurse's response to a call for immediate medical help for the inmate did not create or exacerbate injuries the inmate received from an alleged beating by prison officers, since the nurse arrived within minutes of receiving the call and officers were attending to the inmate's medical needs by administering cardiopulmonary resuscitation. (Florida State Prison)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT
SUPERVISION

Velez v. Johnson, 395 F.3d 732 (7th Cir. 2005). A county jail detainee brought a § 1983 action against a county correctional officer, alleging that the officer failed to protect him from an assault by another inmate by failing to adequately respond and investigate the situation when the detainee pushed the emergency call button in his cell. The detainee had unsuccessfully attempted to alert the officer who checked the cell during his rounds, but his cellmate was holding a razor to his neck at the time. After the officer left the area, the detainee pushed the emergency call button in his cell, hoping for help. The detainee had to choose his words carefully and said he was "not getting along" with his cellmate. The officer did not investigate the situation nor ask the other officers to do so. The detainee was raped by his cellmate, bitten on his back several times, and cut on his neck. The district court denied the officer's motion for summary judgment on the basis of qualified immunity and the officer appealed. The appeals court affirmed, finding that the detainee need not show that the officer had a specific awareness that an assault would occur, but that it was sufficient to show that the officer failed to act despite his knowledge of a substantial risk of harm. The court held that the detainee had a clearly established Fourteenth Amendment right to be free from the officer's deliberate indifference to an assault by another inmate. (Milwaukee County Jail, Wisconsin)

U.S. Appeals Court
OFFICER ON PRIS-
ONER ASSAULT
BRUTALITY

Watts v. McKinney, 394 F.3d 710 (9th Cir. 2005). A state inmate filed a civil rights action alleging that a prison guard violated his Eighth Amendment rights. The district court denied summary judgment for the guard and he appealed. The appeals court affirmed, finding that the guard was not entitled to qualified immunity from liability. The court held that a reasonable prison guard would have reasonably believed that kicking a helpless prisoner's genitals was cruel and unusual conduct. The court noted that "to suppose that any reasonable person, let alone a trained prison officer, would not know that kicking a helpless prisoner's genitals was cruel and unusual punishment is beyond belief. The Supreme Court did not need to create a catalogue of all acts by which cruel and sadistic purpose to harm another would be manifest; but if it had, such act

would be near the top of the list. The case must go to trial.” (Pelican Bay State Prison, California)

U.S. Appeals Court
SUICIDE

Woloszyn v. County of Lawrence, 396 F.3d 314 (3rd Cir. 2005). The administratrix of a pretrial detainee who committed suicide in jail brought a § 1983 action and wrongful death claims against and county and corrections officers. The district court granted summary judgment in favor of the defendants and the administratrix appealed. The appeals court affirmed, finding that the administratrix failed to establish that the corrections officers were aware of the detainee’s vulnerability to suicide. The court noted that even though a captain said he would put the detainee on five-minute checks, he also said that he would follow a nurse’s advice. The nurse found the detainee to be polite, cooperative and alert, and cleared the detainee for one-hour checks for signs of alcohol withdrawal. The detainee told a booking officer he was not suicidal and appeared to be in good spirits. The court also held that the fact that a breathing mask was not in its designated location did not constitute deliberate indifference. Upon finding the detainee hanging by a sheet, officers immediately initiated CPR without waiting for the protective mask to arrive, they continued CPR until a protective breathing mask arrived, and the administratrix did not claim that immediate use of the protective mask would have prevented the detainee’s death. The court found that the administratrix’s expert failed to identify what specific type of training would have alerted officers to the fact that the detainee was suicidal. (Lawrence County Correctional Facility, Pennsylvania)

U.S. Appeals Court
SUICIDE

Ziemba v. Rell, 409 F.3d 553 (2nd Cir. 2005). A prisoner brought a purported class action against correctional officials, alleging that the execution of another prisoner would violate his constitutional rights by increasing the risk that he and other suicide-prone prisoners would attempt to harm themselves, and that the state corrections department lacked the resources necessary to prevent harm. The district court dismissed the action and denied the prisoner’s request for a temporary restraining order, and the prisoner appealed. The appeals court affirmed, finding that the prisoner failed to establish a causal connection between the execution and the risk that he would attempt to harm himself, as required to have standing to bring a claim. The court noted that the alleged injury of which the prisoner complained would be caused by a chain of events including actions taken by class members themselves, and was highly indirect. The prisoner asserted that the media paid substantial attention to the pending execution case and that news reports of the execution would be read class members. (Connecticut)

U.S. Appeals Court
OFFICER ON PRISONER ASSAULT

Ziemba v. Armstrong, 430 F.3d 623 (2nd Cir. 2005). A state prison inmate brought a civil rights action alleging that prison officials failed to provide constitutionally-adequate health care, failed to protect him from the use of excessive force, and used excessive force. The district court granted summary judgment for the officials, in part, and they appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that evidence was sufficient to establish that a state corrections commissioner exhibited deliberate indifference to the inmate’s constitutional rights or was grossly negligent in training subordinates, and that evidence was sufficient to impose supervisory liability on a prison warden. The inmate was allegedly placed in four-point restraints for 22 hours, beaten, and denied medical care. The court found that summary judgment was precluded by a genuine issue of material fact as to whether a prison nurse and medic were deliberately indifference to the inmate’s serious medical needs. (Connecticut State Prison)

2006

U.S. Appeals Court
MEDICAL CARE

Alberson v. Norris, 458 F.3d 762 (8th Cir. 2006). A state prisoner’s mother, on the prisoner’s behalf and as the special administrator of his estate, brought a § 1983 action against prison officials, alleging deliberate indifference with respect to the medical treatment of the prisoner, who died from complications arising from Goodpasture Syndrome. The district court granted summary judgment to the defendants and the mother appealed. The appeals court affirmed, finding that Goodpasture Syndrome was a sophisticated medical condition, and thus, the estate, which was alleging inadequate medical treatment, was required to present expert testimony proving causation. The court noted that after the prisoner complained of earaches and other afflictions, he received extensive medical treatment, including treatment from a physician on six separate dates in a period of about two months, followed shortly thereafter by admission to the infirmary ward. (Wrightsville Unit, Arkansas Department of Corrections)

U.S. District Court
USE OF FORCE
PRISONER ON PRISONER ASSAULT

Avratin v. Bermudez, 420 F.Supp.2d 1121 (S.D.Cal. 2006). A prisoner who was involved in a fight with another inmate brought a civil rights action against a corrections officer, alleging that the officer used excessive force in attempting to stop the fight. The officer moved for summary judgment and the district court granted the motion. The court held that the officer’s alleged conduct of firing a wooden projectile from a launcher directly at an unarmed prisoner involved in a fight with another inmate, causing a severe injury to the inmate’s leg, violated the prisoner’s Eighth Amendment right to be free from cruel and unusual punishment. The court noted that no correctional officers, prison personnel or other inmates were at immediate risk during the fight and the officer failed to use any lesser degree of force before firing his launcher. However, the court found that the officer was entitled to qualified immunity for his alleged conduct because it

would not be clear to a reasonable officer that the alleged conduct was unlawful, as a reasonable officer could conclude that the fight posed a risk of serious bodily injury, the officer aimed at the prisoner's leg, virtually eliminating the risk that the prisoner would suffer a life-threatening injury, the fight occurred in a heightened security setting with numerous other inmates present in the yard, and the prisoner and other inmate refused orders to desist. (Centinela State Prison, California)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

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
PRISONER ON PRIS-
ONER ASSAULT
PROTECTION FROM
HARM

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. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

Borello v. Allison, 446 F.3d 742 (7th Cir. 2006). A prisoner brought a federal civil rights suit against prison employees, alleging they were deliberately indifferent to the danger posed by leaving him in a cell with a mentally unstable cellmate, who attacked him. The district court denied the employees' motion for qualified immunity and they appealed. The appeals court reversed and remanded, finding that the prison employees did not deliberately condone the cellmate's attack on the prisoner, in violation of his Eighth Amendment rights, when they reasonably responded to the prisoner's complaints by honoring his request to be transferred to another cell, and by immediately taking the cellmate to a psychiatrist when he began acting strangely, and by interviewing both men. The prisoner was attacked by his cellmate one week after the cellmate's psychiatric evaluation. (Menard Correctional Center, Illinois)

U.S. Appeals Court
HARASSMENT
FAILURE TO PROTECT

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. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

Britt v. Garcia, 457 F.3d 264 (2d Cir. 2006). A prisoner brought a suit against correctional officials and others, alleging failure to protect him in violation of Eighth Amendment, civil rights conspiracy, and state law violations. Following a jury verdict in favor of the prisoner on the civil rights conspiracy claim, the district court denied a post-trial motion for judgment as matter of law on qualified immunity grounds, and ordered a new trial on the issue of punitive damages. The officials appealed. The appeals court held that the officials were not entitled to qualified immunity as a matter of law based on special verdict on which the jury answered "no" to the question asking if the officials had failed to protect the inmate in violation of his Eighth Amendment rights, but "yes" to question asking if they had conspired to violate his constitutional rights. The prisoner was serving a state sentence for a felony conviction when he was assaulted by another inmate who slashed his head, neck, and back. He was rushed to a hospital where he received multiple stitches to close his wounds. Upon his return to prison, he was placed in protective custody but was allegedly attacked at least once more by another inmate, and his cell was allegedly set on fire. He brought suit seeking compensation for his injuries. The jury assessed compensatory damages against two officials in the amounts of \$100,000 and \$50,000, and punitive damages in the amounts of \$5 million and \$2.5 million, respectively. The court concluded

that punitive damages “should not exceed \$200,000” in the case of one defendant and \$100,000 in the case of the other defendant, and ordered a new trial on the issue of punitive damages when the prisoner refused to agree to forego all punitive damages in excess of those amounts. (Sing Sing Correctional Facility, New York)

U.S. District Court
PROTECTION FROM
HARM

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 district court held that genuine issues of material fact existed as to whether city police officers had subjective knowledge the detainee's highly intoxicated state, and whether they acted with deliberate indifference when they left him with his hands handcuffed behind his back. 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. The court noted that an officer testified that if an arrestee was too intoxicated to be booked, it was the usual practice to put the arrestee in a cell until he/she sobered up and, during that period, the handcuffs would be removed unless the detainee was acting violently. 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. District Court
PRISONER ON PRIS-
ONER ASSAULT

Cirilla v. Kankakee County Jail, 438 F.Supp.2d 937 (C.D.Ill. 2006). A pretrial detainee brought a § 1983 action against a county jail and jail personnel, alleging violations of his due process rights. The district court granted the defendants' motion for summary judgment. The court held that the county jail and jail personnel were not aware of, and deliberately indifferent to, a specific, impending, and substantial threat to the pretrial detainee's safety, as required for liability under § 1983 for failure to protect detainee from other inmates in violation of detainee's right to due process. According to the court, even if the detainee was involved in several altercations with other inmates, he never filed grievances or complaints about those incidents, he claimed only some bruising and a bloody nose as result of the altercations, and although the detainee requested medical attention for a sore finger after the altercations, he did not complain at that time about injuries from fights. The court found that the county jail and jail personnel did not act with deliberate indifference after he was injured in a fight with another inmate in a holding cell, and that he received appropriate medical care after the fight. Jail personnel drove the detainee to a hospital where he received three stitches in his head, a splint for his wrist, and x-rays, which found no fractures. Upon his return from the hospital, the detainee was placed in the jail's medical dormitory, where he remained until his transfer out of the jail. While in the medical dormitory, the detainee received medical attention and was never beaten by anyone. The detainee subsequently saw medical or nursing personnel on six occasions without complaining of any serious medical condition or medical crisis. (Kankakee County Jail, Illinois)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Clark-Murphy v. Foreback, 439 F.3d 280 (6th Cir. 2006). The estate of a state inmate who died of dehydration while in an observation cell brought two civil rights suits against prison employees, alleging deliberate indifference to the prisoner's medical needs in violation of the Eighth Amendment. The district court denied qualified immunity to 15 corrections officers and they appealed. The appeals court held that a captain and sergeant who assisted the inmate after he collapsed outside the mess hall were not subjectively indifferent to his serious medical needs in violation of his Eighth Amendment rights, and thus were entitled to qualified immunity. The court noted that each perceived that the inmate faced risks to his psychological health and took reasonable steps to ensure that officers in charge of the inmate's care secured psychological services for him, and that neither officer had any further contact with the inmate or any reason to believe that the inmate's medical needs were not being met. The court found that prison officers and a psychologist who were in the position to perceive that the inmate, who was acting strangely and had been locked in an observation cell and had not received the psychological assistance he needed, were not entitled to qualified immunity on the Eighth Amendment claim alleging deliberate indifference given their interactions with the inmate and their apparent failure to go up the chain of command when a referral did not secure assistance for the inmate. The court also found that the officers and psychologist were not entitled to qualified immunity on the claim that they were deliberately indifferent to the hydration needs of the inmate who died of dehydration after six days in an observation cell, as they could have perceived a serious risk to the inmate based on a heat wave, the fact that water was repeatedly cut off to inmate's cell during their shifts, and the reports of other inmates that the inmate had called out for water. The court found that a correctional nurse who worked just one shift shortly after the inmate's placement in an observation cell was entitled to qualified immunity from liability given her limited exposure to

the inmate and the resulting absence of evidence that there was reason to believe that the nurse perceived that psychological help had not been obtained for the inmate or that his condition was deteriorating. (Bellamy Creek Correctional Facility, Ionia, Michigan)

U.S. Appeals Court
PRISONER SUICIDE

Collins v. Seeman, 462 F.3d 757 (6th Cir. 2006). The mother of a prisoner who had committed suicide brought a § 1983 action against corrections officials, alleging that they acted with deliberate indifference to a known risk of suicide in violation of the prisoner's Eighth Amendment rights. The district court entered summary judgment in favor of the officials and the mother appealed. The appeals court affirmed. The court held that correctional officers were not subjectively aware that the prisoner was a suicide risk, and thus were not liable for an Eighth Amendment violation in connection with his death, where they were informed that the prisoner had requested to see a crisis counselor, but were not informed that he had said he was suicidal. The court noted that inmates often requested meetings with crisis counselors for reasons both serious and mundane. The court found that an officer did not recklessly or intentionally disregard a known risk of suicide, and thus was not liable under § 1983, where he immediately informed the control room after the prisoner requested a crisis counselor and said he was feeling suicidal. The officer then returned to the prisoner's cell and received assurance that the prisoner would be all right until the counselor arrived, the officer again returned to the cell within 15 to 20 minutes, and another officer then assumed responsibility for monitoring the prisoner. Approximately fifty-five minutes before the prisoner's suicide was discovered, the prisoner told a correctional officer that he wanted to see the prison crisis counselor because he was feeling suicidal. The officer relayed the request up the chain of command, but as it was passed along, the information that the prisoner was feeling suicidal was apparently dropped and the message was transmitted as a generic request to see the crisis counselor. (Sheridan Correctional Center, Illinois).

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

Conley v Very, 450 F.3d 786 (8th Cir. 2006). A state prisoner brought a § 1983 action against a correctional officer, alleging that the officer failed to protect him. The inmate had been raped several times by his cellmate. The district court entered judgment, upon the jury's verdict, in favor of the officer. The prisoner appealed. The appeals court reversed and remanded for a new trial, finding that the prisoner was prejudiced by the district court's response to a question posed by the jury. The district court had advised the jury that it must base its decision on the evidence that was presented in the case, and also advised that no evidence was presented that any past complaints were made against the officer. The appeals court found that there was a reasonable likelihood that the jury believed that evidence of prior complaints was relevant, and then construed the absence of such evidence against the prisoner as the party with the burden of proof. (Algos Correctional Center, Missouri)

U.S. Appeals Court
SUICIDE ATTEMPT

Drake ex rel. Cotton v. Koss, 445 F.3d 1038 (8th Cir. 2006). The legal guardian for an incapacitated person who attempted to commit suicide while he was a pretrial detainee in a county jail, and a state department of human services sued a county and various officials in their individual and official capacities under § 1983, alleging violations of the Eighth and Fourteenth Amendments, and asserted a state law claim for negligence. The district court granted the defendants' motion for summary judgment and the guardian appealed. The appeals court affirmed. On rehearing, the appeals court held that county jailers' actions did not constitute deliberate indifference, and the jailers' decision not to assign a special need classification to the pretrial detainee was a discretionary decision protected by official immunity. According to the court, the jailers' actions of conducting well-being checks of the pretrial detainee only every 30 minutes, failing to remove bedding and clothing, and failing to fill the detainee's anti-anxiety prescription in a timely manner did not constitute deliberate indifference. The court found that the jailers' view of the risk was shaped by the diagnosis and recommendations of a psychiatrist, who indicated that the detainee was not suicidal but simply manipulative. The court noted that the jailers' decision not to assign a special need classification to the pretrial detainee, that would have required more frequent observation, was a discretionary decision rather than a ministerial duty, protected by official immunity. The detainee was discovered hanging by a bed sheet from a ceiling vent in his cell. He was not breathing and the jailers immediately set to work resuscitating him and then transported him to a nearby hospital. He survived, but suffered serious brain injuries as a result of the suicide attempt. (McLeod County Jail, Minnesota)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT
SEXUAL ASSAULT

Erickson v. Wisconsin Dept. of Corrections, 469 F.3d 600 (7th Cir. 2006). A female civilian employee of a state department of corrections brought an action against her employer under Title VII and § 1983, claiming hostile work environment after she was raped by a prisoner at an all-male minimum security prison that was housed in same building as her office. The district court denied the employer's motion for judgment as matter of law after a jury returned a verdict in favor of the employee. The employer appealed. The appeals court affirmed. The appeals court held that whether the employer was negligent in addressing the risk that the female employee would be harassed by a male prisoner was for the jury. The district court concluded that "the evidence was sufficient to support the jury's verdict that [WDC's] agents knew of a significant risk of serious harassment, were in a position to take remedial action and failed to act to prevent the sexual harassment from occurring." The employee that she had previously found the prisoner in

her office after hours staring at her in a way that made her very uncomfortable. (Wisconsin Correctional Center System, and Oregon Correctional Center)

U.S. District Court
MEDICAL CARE

Forton v. County of Ogemaw, 435 F.Supp.2d 640 (E.D.Mich. 2006). The estate of a deceased jail inmate brought suit against a county and various employees, claiming deprivation of the inmate's Eighth Amendment right to medical care. The female inmate had been serving a sentence in the jail and died from a cancerous tumor that encircled her esophagus. The district court granted summary judgment in favor of the defendants. The court held that the inmate had an objectively serious medical condition, as required for an Eighth Amendment claim. The court found that the jail nurse supervising medical care of the inmate did not display deliberate indifference to the inmate's medical condition, in violation of Eighth Amendment, where the nurse twice had the inmate sent to a clinic for a physician's evaluation, provided the inmate with an inhaler and instructed the inmate in its use, had the inmate moved to an observation cell, and left orders that the inmate be transported to a medical facility if her condition worsened. The court found that a jail officer who was observing the inmate was not deliberately indifferent to the inmate's medical condition, where the officer had no knowledge of the inmate's condition, administered the inhalator dose, checked on the inmate frequently, and declined the inmate's request that she be taken to hospital, supported by another inmate, only because of the non-hospitalization order left by nurse. According to the court, the alleged failure of the jail administrator, who was not on duty on the day in question, to relay a friend's concern regarding the physical condition of inmate, left as telephone message, did not establish that the administrator was deliberately indifferent to the medical situation of inmate. The court also found that correctional officers did not show deliberate indifference to the inmate, although the inmate was screaming while in an observation cell, wanting to return to her own cell, and not eating, because the officers observed her frequently and took her back to her cell at her request, where she instantly fell to the floor unconscious. (Ogemaw County Jail, Michigan)

U.S. Appeals Court
PRISONER SUICIDE

Grayson v. Ross, 454 F.3d 802 (8th Cir. 2006). The personal representative of the estate of a pretrial detainee who died following self-mutilation while incarcerated in a jail, brought a civil rights action against the county sheriff, the arresting police officer, and jailers in their individual and official capacities alleging violation of the pretrial detainee's right to medical treatment and to due process. The district court granted judgment for the defendants and the estate appealed. The appeals court affirmed in part. The court held that: (1) the detainee did not have an objectively serious medical need on intake from the perspective of the arresting police officer, as a layperson; (2) the arresting police officer did not subjectively know that the detainee required medical attention; (3) a reasonable police officer would not have known on intake that the pretrial detainee had an objectively serious medical need; (4) the detainee did not have an objectively serious medical need on intake from the perspective of the jailer, as a layperson; (5) the jailer did not subjectively know that the detainee required medical attention; (6) a reasonable jailer would not have known on intake that the pretrial detainee had an objectively serious medical need; (7) the county did not have an official practice of booking inmates who were hallucinating without providing medical care; and (8) the district court did not abuse its discretion by excluding the Arkansas State Jail Standards from evidence in the trial, as the jail standards did not represent minimum constitutional standards. (Crawford County Detention Center, Arkansas)

U.S. District Court
PRISONER SUICIDE

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. District Court
OFFICER ON PRISONER ASSAULT
USE OF FORCE

Jenkins v. Wilson, 432 F.Supp.2d 808 (W.D.Wis. 2006). A pretrial detainee brought a civil rights claim alleging that jail officers used excessive force. The district court held that a genuine issue of fact, as to whether deputies were justified in hitting the pretrial detainee about the head in attempting to handcuff him and transport him to segregation, precluded summary judgment. (Dane County Jail, Wisconsin)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT
OFFICER ON PRIS-
ONER ASSAULT

Johnson v. Hamilton, 452 F.3d 967 (8th Cir. 2006). A state prisoner who was involved in a physical altercation with corrections officers brought a § 1983 action, alleging violation of his Eighth and Fourteenth Amendment rights. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court found that the officers' use of force against the prisoner was reasonable. The prisoner pushed and punched one officer in response to the attempt to restrain him and examine his earring to determine whether the earring violated the prison rules. The prisoner continued to assault the officers even after he was restrained. The court noted that the injuries suffered by the officers were much more serious than any suffered by the prisoner, and the prisoner was criminally prosecuted and convicted as a result of his conduct during the altercation. The court held that the prisoner failed to establish that prison officials failed to protect him from other inmates, as would violate the Eighth Amendment, by placing him in a shared cell, absent evidence the prisoner was actually in any personal danger or that any prison officials acted in bad faith by placing him in a shared cell. (Jefferson City Correctional Center, Missouri)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Jones v. Goord, 435 F.Supp.2d 221 (S.D.N.Y. 2006). Inmates brought an action against New York prison officials, challenging the double-celling policy at maximum-security prisons. Double-celling is a practice in which two prisoners are housed in a cell originally designed for one person. The complaint was filed in 1995, and was effectively stayed for some time pending litigation of a companion case challenging the same practice in medium security prisons. After a full trial on the merits, the district court in the medium security case denied the plaintiffs any relief. According to the court, the practice of double-celling inmates did not result in a substantial risk of serious harm to inmates due to violence, in violation of the Eighth Amendment, where incident reports indicated that six years after the implementation of the double-celling policy, inmates generally faced a lower risk of assault than they did before the policy was implemented, and there was no evidence that any under-reporting of assaults affected the reporting of incidents in double cells more than the reporting of incidents generally. The court held that alleged mistakes made by New York prison officials in screening dangerous inmates before placing them in double cells in maximum security prisons did not show that New York's double-celling policy subjected inmates to a substantial risk of serious harm, in violation of the Eighth Amendment, where the rate of inmate assaults had declined in the six years after the double-celling policy was implemented. (New York Department of Correctional Services)

U.S. District Court
DELIBERATE
INDIFFERENCE
PRISONER ON
PRISONER ASSAULT

Jones v. Marshall, 459 F.Supp.2d 1002 (E.D.Cal. 2006). An inmate who was attacked by other prisoners brought suit against prison employees alleging failure to protect his safety and deliberate indifference to his medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the prison officers were not deliberately indifferent to any risk that the inmate might be attacked by other prisoners by releasing him into an exercise yard, absent any evidence that the officers either knew or could have inferred that the new inmate, who had no known enemies, faced a substantial risk of attack from other inmates if released into the exercise yard. According to the court, the officers were not deliberately indifferent to a specific risk, as required to violate the inmate's Eighth Amendment rights by failing to protect him from attack, notwithstanding the inmate's generalized, subjective fear for his safety at the time. The court found that a medical technician was not deliberately indifferent to the serious medical needs of the inmate, who had been attacked by other prisoners in an exercise yard, when she visually examined him through holding cell bars immediately after the incident, but failed to touch him or treat him. The inmate suffered no further injury as a result of the technician's conduct, and the technician did not know of any serious medical condition and fail to treat it. (Solano State Prison, California State Prison at Corcoran)

U.S. District Court
OFFICER ON PRIS-
ONER ASSAULT

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
MEDICAL CARE
WRONGFUL DEATH

Long v. County of Los Angeles, 442 F.3d 1178 (9th Cir. 2006). The widow of an inmate in a county jail brought a § 1983 action in state court against the county and others, alleging failure to adequately train jail medical staff, leading to the denial of adequate medical care which resulted in the inmate's death. Following removal to federal court, the district court granted the county's motion for summary judgment and the widow appealed. The court of appeals reversed and remanded, finding that a genuine issue of material fact existed regarding whether the county's

policy of relying on medical professionals, without offering training on how to implement procedures for documenting, monitoring, and assessing inmates in the medical unit of the jail, amounted to deliberate indifference to the inmates' serious medical needs. The court also found that summary judgment was precluded by a genuine issue of material fact regarding whether the county's failure to implement specific policies regarding the treatment of inmates in the medical unit of the jail amounted to a failure to train the jail's medical staff on how to treat inmates, and whether the policies were the moving force behind the inmate's death. The 71-year-old inmate was serving a 120-day jail sentence, and he suffered from congestive heart failure and other ailments. Over a period of eighteen days his medical condition deteriorated, and although nurses saw him several times during that period, there is no record of a doctor's examination until the morning of the 18th day, hours before he died of cardiac arrest. (Los Angeles County Jail, California)

U.S. District Court
OFFICER ON PRISONER ASSAULT

Moore v. Morales, 445 F.Supp.2d 1000 (N.D.Ill. 2006). The administrator of the estate of a detainee who died in police custody brought a § 1983 action against arresting officers, and other officers and employees of a police department who had processed the detainee at a police station, alleging that the defendants either had used excessive force on the detainee, ultimately leading to his death, or had been deliberately indifferent to his medical needs. The defendants moved for summary judgment and the district court granted the motion in part and denied in part. The court held that the summary judgment was precluded by fact issues as to the degree of force used on the detainee, and whether some police officers failed to stop the infliction of injuries on the detainee by fellow officers. The court found that the police had not shown deliberate indifference to the condition of the detainee and that there was no cover-up of the use of excessive force. (Chicago Police Department, 12th District Police Station, Illinois)

U.S. District Court
SEXUAL ASSAULT
PRISONER ON PRISONER ASSAULT

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 Co. Jail, Alabama)

U.S. Appeals Court
PRISONER SUICIDE

Perez v. Oakland County, 466 F.3d 416 (6th Cir. 2006). The father and personal representative of an inmate's estate brought a § 1983 action against a county, sheriff department, sheriff deputies, inmate caseworker, and psychiatrist alleging the defendants violated the inmate's Eighth Amendment rights by failing to provide appropriate mental health treatment or monitoring while he was being held in a county jail, leading to the inmate's suicide. The eighteen-year-old inmate had hanged himself from a bedsheet tied to a vent in his single cell. The district court granted the defendants' motions for summary judgment and the father appealed. The appeals court affirmed. The court held that a county policy allowing a caseworker, who was not medical personnel, to make decisions regarding housing assignments for mentally ill inmates did not demonstrate deliberate indifference. The court noted that the caseworker was well-trained in mental health needs and suicide, nothing established that the policy had ever resulted in suicide or attempted suicide by another prisoner in the county jail, and the father's expert stated that prisoner screening and placement decisions were commonly made by non-medical officials. The court held that the caseworker was entitled to qualified immunity because it was not clearly established at the time of the suicide that a county jail caseworker could be found to be deliberately indifferent to an inmate's medical needs by moving him to single cell housing without first consulting the inmate's treating physician or the jail's psychiatrist, even though the inmate had threatened suicide and attempted suicide in the past. The court noted that the inmate was not deemed suicidal when he was moved to a single cell, the inmate was not generally deprived of medical treatment involving his mental health needs, and prisoners had no general right to be correctly screened for suicidal tendencies. (Oakland County Jail, Michigan)

U.S. Appeals Court
MEDICAL CARE

Pietrafesa v. Lawrence County, S. D., 452 F.3d 978 (8th Cir. 2006). A widow, as personal representative of a pretrial detainee who died of an acute asthma attack while detained in a county jail, brought a civil rights action against the county and jailers alleging deliberate indifference to the detainee's serious medical needs. The detainee had arrived at the jail at 7:10 p.m. with an envelope marked with the detainee's name, inmate number, and the following notation in bold red letters: "URGENT Colo. Inter-Correctional Medical Summary Transfer Report DELIVER TO MEDICAL DEPARTMENT AT ONCE." In an intake interview, the detainee told the jailer that he suffered from a severe asthma condition. The detainee said he was taking a "bunch" of medications, though he brought with him to the jail only an Albuterol inhaler. After a jury trial, the district court entered judgment in favor of the defendants as a

matter of law. The appeals court affirmed. The court held that the head jailer was not deliberately indifferent to the detainee's medical needs in failing to take the detainee to a physician shortly after the detainee's arrival, absent any evidence that the jailer actually knew of and recklessly disregarded the risk of serious harm to the detainee posed by the lack of access to his prescribed medications over the weekend. According to the court, the head jailer's failure to take the detainee and his medical records to the physician was at most negligence. (Lawrence County Jail, South Dakota)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Pinkston v. Madry, 440 F.3d 879 (7th Cir. 2006). A state inmate brought § 1983 action against two correctional officers, alleging that they violated his Eighth Amendment rights in allowing another prisoner to assault him and thereafter refusing to assist him in receiving adequate medical care. The district court granted the officers' motion for judgment on partial findings and the inmate appealed. The court of appeals held that the inmate did not show that the two correctional officers failed to protect him by allowing a fight between the inmate and another prisoner, given the testimony of three witnesses that a correctional officer, acting alone, could not have operated a locking mechanism so as to open the inmate's cell door, thereby allowing the fight to occur. The court noted an absence of evidence that bolstered the inmate's contention that an officer could have opened the cell door by himself, and an absence of evidence that another officer was present who could have assisted the first officer in opening the cell door. The court found that the officers were not deliberately indifferent to any serious medical needs of the inmate following the alleged altercation with another prisoner, and thus were not liable under the Eighth Amendment and § 1983. The inmate testified that one officer obtained medical supplies, bandaged the inmate's split lip, and subsequently changed the dressing. The court noted that the inmate waited four days to formally request medical attention, and that the inmate refused to cooperate with medical staff and accept medical assistance when it was offered to him. (Indiana Department of Corrections Maximum Control Complex, Westville, Indiana)

U.S. District Court
PRISONER SUICIDE

Posey v. Southwestern Bell Telephone L.P., 430 F.Supp.2d 616 (N.D.Tex. 2006). The family of deceased county jail detainee sued a county and the company that provided telephone services to a jail, after the detainee hanged himself using the cord from a defective telephone in his cell. The county moved for summary judgment. The district court dismissed the federal claims against all defendants. The court held that jail employees did not violate the due process rights of the detainee by displaying deliberate indifference to his condition while he was being booked and placed in a cell, when they left him alone in the cell, with a broken telephone that had an exposed cord. The court noted that where there was no showing that the employees knew the detainee was a suicide risk, and any shortcomings in following the county's suicide screening procedures were at most gross negligence, which was below the deliberate indifference standard needed to impose § 1983 liability. The court held that there was no policy or custom by which county could be held liable under a § 1983 action for the suicide death of the detainee. According to the court, the two previous incidents of detainee suicide, over almost two decades, one of which may have involved telephone cords, did not establish that the existing suicide policy was defective for failure to instruct staff on this contingency, and that failure of staff to follow some suicide prevention policies did not rise to level of deliberate indifference required for county liability. (Dallas County Jail, Texas)

U.S. District Court
MEDICAL CARE

Pryor v. Dearborn Police Dept., 452 F.Supp.2d 714 (E.D.Mich. 2006). The estate of an arrestee brought a § 1983 action against police officers and a police department, alleging failure to provide the arrestee with adequate medical care. The district court held that summary judgment was precluded by a genuine issue of material fact as to whether the arrestee's condition-- a crack cocaine overdose-- constituted a serious medical need, and whether the police officers acted with deliberate indifference to the arrestee's serious medical need. The detainee was arrested, and while he was in custody in a police vehicle he consumed an unknown quantity of cocaine. He again ingested cocaine when he was detained at the police station and subsequently collapsed on the floor of his cell and began convulsing. Paramedics were eventually called, and they transported the arrestee to a hospital, where he died three days later. (Dearborn Police Station, Michigan)

U.S. District Court
PRISONER ON PRISONER ASSAULT
WRONGFUL DEATH

Rentz v. Spokane County, 438 F.Supp.2d 1252 (E.D.Wash. 2006). The personal representatives of the estate of a pretrial detainee, who was murdered by two fellow pretrial detainees in a county jail, sought recovery of damages from county defendants under Washington's wrongful death and survival statutes. Parents and siblings, as beneficiaries of the estate, also sought recovery of damages. The court granted partial summary judgment for the defendants. The court held that neither the parents nor the siblings could recover under Washington's wrongful death and survival statutes, but that the parents could seek recovery from the county defendants under § 1988 for violations of the detainee's constitutional rights. The court also held that the parents were entitled to assert Fourteenth Amendment substantive due process causes of action against the county defendants to vindicate their constitutional rights for loss of companionship with their adult son, but the siblings were not. The court allowed the plaintiffs to amend their complaint to include the jail officers and a jail nurse because they were allegedly involved with the placement

of the detainee in the same jail dormitory as the individuals who murdered him. (Spokane County Jail, Washington)

U.S. District Court
MEDICAL CARE

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
MEDICAL CARE

Shaw v. Coosa County Com'n., 434 F.Supp.2d 1199 (M.D.Ala. 2006). The estate of deceased inmate brought an action against county commission and sheriff, stemming from the inmate's death while incarcerated at the county jail. The district court granted the county's motion for summary judgment. The court found that, in matters related to supervision of inmates and otherwise operating county jails, Alabama's sheriffs are state, not county officers, and the sheriff's authority is totally independent of the county commission. According to the court, the county commission did not owe a duty of care under Alabama law to the inmate, where policies of the commission with respect to funding jails or providing medical treatment to persons held in jails were not the moving force behind the alleged injury. The court noted that, under Alabama law, sheriffs have full responsibility for daily management of jails, including inmate supervision, and they are not subject to county oversight in their performance of this responsibility. (Coosa County Jail, Alabama)

U.S. Appeals Court
PRISONER SUICIDE
ELECTRONIC
MONITORING

Short v. Smoot, 436 F.3d 422 (4th Cir. 2006). The wife and administrator of the estate of a detainee who committed suicide in jail brought a § 1983 action against a county and sheriff's deputies alleging deliberate indifference to a substantial risk that the detainee would commit suicide. The district court denied summary judgment for the defendants and they appealed. The appeals court held that jailers who placed the detainee in a cell under video surveillance were entitled to qualified immunity, but the jailer who observed the detainee in the cell by video surveillance was not entitled to qualified immunity. According to the court, the jailers who placed the detainee in a cell under video surveillance were entitled to qualified immunity even though they did not remove the detainee's clothing and shoelaces, because the detainee did not have the right to have his jailers take precautions against his suicide beyond placing him in a cell under video surveillance. The court found that the jailer who observed the detainee in his cell by video surveillance was not entitled to qualified immunity because the jailer observed the detainee remove his shoelaces, tie them to a bar, place a noose around his neck, and test the weight of his rope. The jail policy and procedures manual in effect at the time addressed the proper treatment of potentially suicidal inmates and required custodial officers to remove all potential tools such as sheets, blankets, and shoelaces, to conduct inmate checks at random intervals at least twice per hour, and to make reports of any unusual occurrences. The jail used surveillance cameras to monitor inmate activity. The court reviewed the videotape taken from the surveillance camera that recorded the detainee's activity and it showed the detainee removing the laces from his shoes, tying them together, and climbing from his bed to the bars of his cell. (Warren County Jail, Virginia)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

Skinner v. Lampert, 457 F.Supp.2d 1269 (D.Wyo. 2006). An inmate, on behalf of himself and current and future inmates at a state prison, brought a § 1983 action against state prison officials, alleging that policies, practices, and customs of officials placed inmates at risk of unprovoked assault, bodily injury, and death at hands of other inmates. The court found that conditions at the prison violated inmates' Eighth Amendment right to be reasonably protected from physical violence in the form of assaults by other inmates, and established a remedial plan to eliminate those violations. The prison brought a motion to terminate the final decree and all related prospective relief, under the two-year provision of the Prison Litigation Reform Act (PLRA), and the inmates brought a motion for contempt. The court held that its supervision over the prison's inmate conflict documentation system could not be terminated and that the prison's interpretation of "institutional deficiency" in the remedial plan constituted deliberate

indifference. The court held that the initial investigation requirement, reporting requirement, general incident tracking log requirement, and educational requirement were narrowly tailored, as required by PLRA, and the requirement for incorporation of various prison policies and state procedures were all narrowly tailored and the least intrusive means as required by PLRA. (Wyoming State Penitentiary)

U.S. District Court
PRISONER ON PRISONER ASSAULT

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
SUICIDE

Smith v. Brevard County, 461 F.Supp.2d 1243 (M.D.Fla. 2006). The personal representative of the estate of pretrial detainee who hung himself in his cell, brought a § 1983 action on behalf of the survivors of the estate, against a county sheriff, officers, and a non-profit corporation which was under contract to provide mental health services to the prisoners at detention center. The sheriff, officers and corporation moved to dismiss and the district court granted the motion in part, and denied in part. The court held that allegations by the estate that, prior to the detainee's hanging himself in his cell, his family members and friends called and went to the detention center in person to inform the non-profit corporation that the detainee was suicidal, were sufficient to satisfy the deliberate indifference test in the suit. After receiving knowledge of the detainee's suicidal tendency, the corporation failed to provide adequate mental health care to the detainee. According to the court, knowledge that the detainee was actually threatening to commit suicide was certainly enough to show knowledge of a substantial risk of suicide, rather than just a mere possibility. The court held that the estate stated a cause of action under § 1983 against the county sheriff, in his official capacity, for violating the detainee's Fourteenth Amendment rights. According to the court, violation of the detainee's constitutional rights was the result of the sheriff's failure to provide adequate staffing and safe housing for suicidal inmates, and in light of the sheriff's knowledge that inmate suicide was a problem, his failure to address any policies that were causing suicides constituted deliberate indifference to the constitutional rights of inmates. (Brevard County Detention Center, Florida)

U.S. Appeals Court
PRISONER ON PRISONER ASSAULT

Smith v. Cummings, 445 F.3d 1254 (10th Cir. 2006). A prisoner brought civil rights claims and state law claims against a former prison officer and prison officials. The district court entered judgment against the prison officer and summary judgment in favor of the other defendants. The appeals court affirmed in part and remanded in part. The court held that prison officials did not violate the Eighth Amendment by failing to clear an area through which segregated inmates passed, of all inmates from the regular population, when escorting segregated inmates to and from the protective housing unit, absent a showing of conditions posing a serious risk of harm or evidence of deliberate indifference. The court noted that no segregated inmate was ever assaulted on these occasions, other precautions were taken by the officials, and the officials acted promptly in response to the inmate's particular safety concerns once alerted. (Lansing Correctional Facility, Kansas)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Stephens v. Correctional Services Corp., 428 F.Supp.2d 580 (E.D.Tex. 2006). A pretrial detainee brought an action against a private jail corporation, alleging civil rights violations and common law negligence stemming from an attack while he was incarcerated. The corporation moved for dismissal. The district court held that the corporation was not entitled to state sovereign immunity and that the corporation was potentially liable under § 1983. The court found that the detainee properly stated a negligence claim, and also a viable claim for failure to train and/or supervise. The court noted that although the establishment and maintenance of jails were "governmental functions" under state law, jail services provided by a private entity were not. The detainee alleged that the corporation had a duty to protect his well-being and to ensure his reasonable safety while incarcerated, and that the corporation breached such duty by not properly

segregating him from violent inmates who threatened his life. He alleged that he informed officials of the death threats and they took no action, and that he was severely beaten by three prisoners and suffered life-threatening injuries. (Jefferson County Corrections Facility, Texas)

U.S. District Court
PRISONER SUICIDE

Taylor v. Wausau Underwriters Ins. Co., 423 F.Supp.2d 882 (E.D.Wis. 2006). The estate of a pretrial detainee who had committed suicide in jail brought § 1983 claims against a county corrections officer, alleging deliberate indifference to serious medical needs, a claim against the county alleging that the county maintained an unconstitutional informal policy of allowing inmates on suicide watch to turn out their lights, and a state law wrongful death claim against the officer and county. The district court granted summary judgment in favor of the officer and county. The court held that the county was not liable for a due process violation under § 1983 for deliberate indifference to the detainee's serious medical needs absent evidence that the officer's delay in turning on the detainee's light after the detainee had turned it off, during which time the detainee hanged himself, was a standard practice or an aberration. According to the court, even if the jail's unofficial policy of allowing inmates on suicide watch access to light switches was the cause of the detainee's suicide, in that it compromised corrections officers' ability to supervise the detainee, the county was not deliberately indifferent to the detainee's serious medical needs in violation of his due process rights. The court found that the jail's classification of the detainee as a suicide risk did not indicate he was actually a suicide risk, the fact that the detainee was a former corrections officer charged with heinous crimes did not indicate a substantial suicide risk, and, even if suicide risk was indicated by facts that the detainee stole a razor, that there were scratches on his wrists, and that he removed elastic from his underwear, the county placed him on suicide watch and thus was not indifferent. The court noted that the absence of mental illness in an inmate who commits suicide is not fatal to a claim for deliberate indifference to serious medical needs. The detainee was a former correctional officer charged with attempted murder, kidnapping, and sexual assault of a minor. He was admitted to jail where he was placed on a suicide watch in a cell with constant camera surveillance. (Fond du Lac County Jail, Wisconsin)

U.S. District Court
MEDICAL CARE
SUICIDE ATTEMPT

Thomas v. Walton, 461 F.Supp.2d 786 (S.D.Ill. 2006). A state prisoner brought civil rights claims against correctional officials, alleging use of excessive force, deliberate indifference to medical needs, and retaliation in violation of his First Amendment rights. The defendants' motion for partial summary judgment was granted in part and denied in part. The district court held that a one-day delay in providing access to a mental health professional following the prisoner's suicide attempt did not involve deliberate indifference and that a 10-day delay in providing medical attention was not deliberate indifference. The court found that the prisoner's repeated refusal to comply with an order to submit to a strip search during a cell inspection justified spraying him with the chemical agent. The court found that the spraying did not involve the use of excessive force, where the chemical was not used in a quantity greater than necessary to subdue the prisoner, secure his compliance with the order, and assure the safety of the officers. The court noted that the prisoner was being held in segregation in a maximum security prison and had a history of assaults on correctional officers. (Tamms Correctional Center, Illinois)

U.S. Appeals Court
PRISONER ON PRIS-
ONER ASSAULT

Triestman v. Federal Bureau of Prisons, 470 F.3d 471 (2nd Cir. 2006). A pro se federal prisoner, who was injured when he was attacked by his roommate in a locked cell, brought an action against the federal Bureau of Prisons (BOP) and the United States under the Federal Tort Claims Act (FTCA). The district court partially dismissed the complaint and the prisoner appealed. The appeals court vacated and remanded. The court held that the suit was not barred by the discretionary function exception to the FTCA, as the complaint's allegations could be read to refer to negligence of the officer on duty by failing to patrol or respond diligently. The court noted that the BOP had in place a program statement which provided that "[s]ignaling devices will be available for inmate use in all locked housing units that do not have continuous staff coverage," and that "[i]nmates will not be left unattended in locked areas unless a signaling device is available to them for emergencies." According to the court, the language of this program statement makes it clear that prison officials must provide "continuous staff coverage" to, and may not leave "unattended," any inmate in a locked housing unit who does not have access to an emergency "signaling device." The prisoner, a first-time, non-violent inmate, had originally been "designated a low security inmate and initially housed [in a] low security facility." But due to overcrowding, he was transferred to a "medium/high security prison" and was assigned to share a cell with an inmate who, the prisoner argued, "was known to the [BOP] to be a violent criminal and sexual predator." He was assaulted by his cellmate, dislocating his shoulder and having his hand burned with lit cigarettes. Despite his shouts for help, no officer responded, and during that time the prisoner was at the mercy of his cellmate, and in excruciating pain and fear. (Federal Corr'l Institution at Ray Brook, New York)

U.S. District Court
SEXUAL ASSAULT
SEARCHES

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
OFFICER ON PRIS-
ONER ASSAULT
USE OF FORCE

U.S. v. Gonzales, 436 F.3d 560 (5th Cir. 2006). Following a jury trial, deportation officers were convicted of deprivation of civil rights and one defendant appealed. The appeals court held that evidence was sufficient to support a finding that the defendant willfully sprayed a detainee, who had a broken neck, with pepper spray and that the use of pepper spray resulted in bodily injury. The court noted that a detention officer testified that while the defendant was carrying the detainee to the bus, he said "Let's Mace the fucker and see if he budges" and two other detention officers remembered a similar statement, and when the defendant exited the bus, he was coughing, smirking sarcastically, and claiming that there had been an "accidental discharge." After the pepper spray was used, the detainee's mouth was foaming, he complained of stinging pain, and his eyes were swollen shut for at least three hours. The court found that the force that caused this pain and that the pepper spray was applied when the detainee was paralyzed, handcuffed, and lying on the floor of the bus. The detainee made his injury known to the defendant, screaming "they broke me..." and in response to his pleas the officers taunted him and invited people to wipe their feet on him. Two of the defendants dragged his limp body from a house to the van, dragged him off the van onto a bus, and witnessed his reaction to being pepper sprayed. According to the court, by moving the detainee without stabilizing him, the officers exposed him to a risk of harm. The detainee was left alone on the bus floor, handcuffed, eyes swollen shut, and foaming at the mouth, despite the officers' training that, due to the risk of potentially fatal asphyxiation, those who had been pepper sprayed should be continually monitored and placed upright, never in a prone position. (San Antonio Division of the Immigration and Naturalization Service [INS] and Brazos County Jail, Texas)

U.S. District Court
PRISONER ON PRIS-
ONER ASSAULT

U.S. v. Shelton, 431 F.Supp.2d 675 (E.D.Tex. 2006). An inmate was convicted of forcibly assaulting a correctional officer, and a sentencing hearing was held. The district court held that a sentence of 36 months' imprisonment, exceeding the sentencing guidelines range of 12 to 18 months, was warranted for the inmate's conviction for forcibly assaulting a correctional officer by throwing feces and urine that struck the officer in the head, face, and chest. The court noted that the inmate's conduct was more than mere physical contact, and subjected the officer to the risk of a host of infectious diseases. The officer had to be treated with a cocktail of drugs to protect against such diseases, and the court held that the need for adequate deterrence was important due to prevalence of such assaults by prisoners. (Texas)

U.S. District Court
PROTECTION FROM
HARM
CRIPA- Civil Rights of
Institutionalized
Persons Act

U.S. v. Terrell County, Ga., 457 F.Supp.2d 1359 (M.D.Ga. 2006). The federal government brought a Civil Rights of Institutionalized Persons Act (CRIPA) action against a county, county sheriff, and various other county officials, seeking a determination that county jail conditions were grossly deficient in violation of the Fourteenth Amendment. The district court granted the government's motion for summary judgment. The court held that the sheriff and other officials were deliberately indifferent to the jail's gross deficiencies in the areas of medical and mental health care for inmates, protection of inmates from harm, environmental health and safety of inmates, and fire safety, in violation of the due process clause. The court noted that the lack of funds is not a defense to, nor legal justification for, unconstitutional conditions of a jail, for the purpose of analyzing a deliberate indifference claim under the due process clause of the Fourteenth Amendment. Even if a defendant argues that it is planning or working towards construction of a new jail to remedy the unconstitutional conditions at the current facility, the failure to implement interim measures to alleviate those conditions demonstrates deliberate indifference, according to the court. (Terrell County, Georgia)

U.S. Appeals Court
OFFICER ON PRIS-
ONER ASSAULT

U.S. v. LaVallee, 439 F.3d 670 (10th Cir. 2006). Former prison officers who were convicted in district court of conspiracy and deprivation of inmates' constitutional rights, appealed their convictions. The appeals court affirmed. The court held that the defendants were not denied their due process right to a fair trial when a former prison supervisory attorney allegedly assisted the prosecutor. The court found that the de minimus injuries suffered by inmates when they were attacked by the defendants were sufficient to support a conviction. According to the court, a two-level downward sentencing departure based on the defendants' susceptibility to abuse in prison was not abuse of the court's discretion. The court noted that the government began investigating allegations of the widespread abuse of prisoners and the falsification of records to cover up that abuse at the prison in 1997. As a result of the investigation, eight Bureau of Prisons ("BOP") correctional officers were indicted and two were charged. Three officers pleaded guilty and cooperated with the government by providing testimony at trial. (United States Penitentiary,

Florence, Colorado)

U.S. Appeals Court
OFFICER ON PRIS-
ONER ASSAULT

Valdes v. Crosby, 450 F.3d 1231 (11th Cir. 2006). The estate of a death-row inmate who died in prison after an alleged beating by prison guards brought § 1983 and state law actions against prison officials and prison nurses, alleging Eighth and Fourteenth Amendment violations. The inmate's estate alleged that several guards beat the inmate during a cell extraction, and that the inmate did not resist or act aggressively and no weapons were visible in his cell. The inmate was on death row for having killed a guard at another facility during an escape attempt. Evidence indicated that the inmate's death was not due to injuries sustained repeatedly throwing himself off the bunk onto the concrete floor, as the officers reported, but was due to a massive physical beating that occurred within five to ten minutes of his death. The district court granted the defendants' motions for summary judgment in part and denied in part. A former warden appealed. The appeals court affirmed. The court held that the plaintiff sufficiently stated a claim that prison guards beat the inmate and that the plaintiff created triable issues as to: (1) whether the prison had a history of widespread abuse of the inmates; (2) whether the warden established customs and policies that resulted in deliberate indifference to constitutional violations; and (3) whether the warden failed to take reasonable measures to correct the alleged deprivations. The court noted that, at the time of the inmate's death, it was clearly established that a warden could face liability under § 1983 when, faced with a history of widespread abuse, he failed to take reasonable steps or he adopted policies or customs that resulted in deliberate indifference. Evidence showed that the prison had a notorious reputation for inmate abuse, the warden's predecessor warned him about abusive guards, yet the warden promoted one such guard and had him work on the wing where inmates with the most serious disciplinary problems were housed. Evidence also showed that the warden discontinued the practice of videotaping guards extracting prisoners from cells, and that the warden did not read the inmates' abuse of force complaints, but gave them to his secretary to handle. The court found that the warden was on notice of the need to correct or to stop the abuse by the officers. (Florida State Prison)

U.S. Appeals Court
MEDICAL CARE

Vaughn v. Greene County, Arkansas, 438 F.3d 845 (8th Cir. 2006). The sister of a pretrial detainee brought a civil rights action against a sheriff and others to recover damages related to the in-custody death of her brother. The district court denied the sheriff's motion for summary judgment and the sheriff appealed. The court of appeals dismissed in part, reversed and remanded in part. The court held that the county sheriff had no knowledge of the pretrial detainee's serious medical needs, and thus was entitled to qualified immunity. The court noted that the sheriff had no personal interaction with the pretrial detainee during his incarceration, and there was no indication that the sheriff knew the pretrial detainee had been vomiting for several hours, was not provided with his anti-depressant medication for two to three days preceding his death, or had heart problems that put him at risk for a heart attack. According to the court, the sheriff's practice of delegating to others such duties as reading mail and responding to communications regarding jail inmates did not amount to deliberate indifference to the pretrial detainee's serious medical needs, as required to be held individually liable for the detainee's death in a § 1983 action. The 46-year-old detainee had completed a medical intake form indicating he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although he had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. The jail ran out of his anti-depressant medication for two days and the detainee began to act odd. He was moved to an isolation cell to be monitored. He was later found dead in the cell. An autopsy led to the determination that the detainee died of natural causes--arteriosclerotic cardiovascular disease--causing a heart attack that resulted in his death. Detectable amounts of his anti-depressant medication were found in the detainee's system during the autopsy. (Greene County Jail, Arkansas)

U.S. District Court
PRISONER SUICIDE
ATTEMPT

White v. Crow Ghost, 456 F.Supp.2d 1096 (D.N.D. 2006). An arrestee brought a *Bivens* action against personnel of a jail operated by the Bureau of Indian Affairs (BIA), alleging failure to provide adequate medical care, unsanitary conditions, and delayed or prevented bond hearings. The district court granted summary judgment for the defendants. The court held that jail officials were not deliberately indifferent to the arrestee's medical needs, in violation of his Eighth Amendment rights, where officials provided the arrestee with medical care promptly after learning of his suicide gestures or attempts, and again upon learning he might have an infection. The court noted that when the arrestee's need for medication was established, officials ensured that the medications were administered. The court found that the officials were not deliberately indifferent to any risk of harm to arrestee from his placement in two different, allegedly cold and unsanitary jail cells for a total of four days, and thus such placement did not rise to the level of an Eighth Amendment violation. The court noted that the arrestee was placed in those cells after his suicide gestures or attempts so that he could be monitored, his clothing and bedding was removed for his protection after he tried to hang himself, and cleaning supplies were withheld to protect him. (Standing Rock Agency, Fort Yates Detention Center, North Dakota)

U.S. District Court
OFFICER ON PRISONER ASSAULT
SEXUAL ASSAULT

White v. Ottinger, 442 F.Supp.2d 236 (E.D.Pa. 2006). A male county jail inmate sued a county, warden, deputy warden, and captain of corrections officers, claiming that their failure to protect him from a sexual assault by a female officer violated his constitutional and common law rights. The district court held that: (1) the county was not liable; (2) there was no violation of the inmate's substantive due process rights; (3) there was no violation of the inmate's equal protection rights; (4) officials had not conspired to deny the inmate's rights, in violation of the Civil Rights Act; and (5) the inmate was not falsely imprisoned when sent to solitary confinement for theft. But the court also found that summary judgment was precluded by fact issues as to whether the female officer had subjected the inmate to cruel and unusual punishment, whether the sexual activity with the inmate was consensual, whether officials were deliberately indifferent to the condition of the inmate, and whether officials had intentionally inflicted emotional distress on the inmate by ignoring the risk posed by the presence on the corrections staff of a female officer with a history of sexually assaulting young male inmates, and doing nothing to prevent assaults on the inmate. (Montgomery County Correctional Facility, Pennsylvania)

U.S. District Court
PRISONER ON PRISONER ASSAULT

Wilson v. Maricopa County, 463 F.Supp.2d 987 (D.Ariz. 2006). In a civil rights suit arising from a fatal assault on a county jail inmate by other inmates, the county defendants filed motions for summary judgment on all claims. The plaintiffs filed a motion for reconsideration of the court's order that had dismissed the county sheriff's office. The summary judgment motions were granted in part and denied in part; the motion for reconsideration was denied. The court held that summary judgment on Eighth Amendment liability for the fatal assault on the inmate was precluded by genuine issues of material fact as to: (1) whether the county, through its final policy maker the sheriff, implemented policies, customs, and practices with the requisite subjective intent of deliberate indifference; (2) whether the county, through the sheriff, failed to act in the face of obvious omissions and likely constitutional violations; and (3) whether that failure to act caused a constitutional violation. The court held that the estate sufficiently alleged a § 1983 claim against the sheriff in his individual capacity by alleging that the sheriff was directly liable under § 1983 for being deliberately indifferent in failing to supervise and train jail officers in appropriate, lawful, and constitutional policies and procedures for providing a safe environment for inmates. The court also found that the estate sufficiently alleged a claim that the sheriff was deliberately indifferent in fostering, encouraging, and knowingly accepting formal and informal jail policies condoning brutality among the inmates and indifference to proper supervision. According to the court, a jail supervisor could be found to have been deliberately indifferent to the safety of the inmate if he knew that not having an officer on the ground in the jail yard posed a risk of violence among the inmates and nonetheless allowed an officer to cover both the yard and another post, which required the officer to leave the yard unattended for a significant period of time. (Maricopa County Facility, known as "Tent City", Phoenix, Arizona)

U.S. District Court
PRISONER ON PRISONER ASSAULT

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

U.S. District Court
MEDICAL CARE

Winters ex rel. Estate of Winters v. Arkansas Department of Health and Human Services, 437 F.Supp.2d 851 (E.D.Ark. 2006). The administrator of the estate of mentally ill pre-trial detainee/civil committee who had died of peritonitis while in custody of a sheriff sued the sheriff and the Arkansas Department of Human Services (DHS) under § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. Following bench trial, the district court held that neither DHS nor the sheriff caused or contributed to the death of the detainee/committee, and they were not liable under the Due Process Clause, Eighth Amendment, Rehabilitation Act, or ADA. The court found that the sheriff had no policy or custom to apprehend and incarcerate acutely mentally ill persons, as indicated by the fact that the detainee may have been only person under civil commitment ever housed in the sheriff's detention facility. (Benton County Jail, Arkansas)

U.S. District Court
OFFICER ON PRISONER ASSAULT

Ziemba v. Armstrong, 433 F.Supp.2d 248 (D.Conn. 2006). A prison inmate sued a correctional officer under § 1983, seeking actual damages of \$100,000 and punitive damages of \$150,000, for injuries incurred when excessive force was used to place the inmate in a four-point restraint. A jury returned a verdict against one officer, who moved for judgment as matter of law and a new trial. The district court denied the motions,

finding that the officer was not entitled to qualified immunity and that the jury could find that the officer had the requisite state of mind when he attacked the inmate. The court found that compensatory damages did not shock the conscience and that punitive damages of \$150,000 were warranted. The jury found that the officer hit the inmate in the face, knelt on him and otherwise inflicted pain in the course of securing the inmate in a four-point restraint, where he remained for 22 hours. The court noted that the officer engaged in reprehensible conduct by hitting the inmate after the inmate was secured, and that punitive damages were only 50% higher than compensatory damages. (Connecticut Department of Corrections)

2007

U.S. District Court
OFFICER ON
PRISONER ASSAULT

Allen v. City of New York, 480 F.Supp.2d 689 (S.D.N.Y. 2007). A prison inmate sued a city and corrections officers, claiming violation of the Eighth Amendment, false arrest, and malicious prosecution arising from a beating administered by the officers while being escorted to his cell. The district court granted summary judgment for the defendants in part, and denied in part. The court held that summary judgment was precluded by fact issues regarding whether officers accompanying inmate could and should have intervened to keep one officer from banging the inmate's head against a wall, whether the officer who allegedly banged the inmate's head against a wall used excessive force, whether an officer who filed a criminal assault complaint against the inmate committed malicious prosecution, and whether that officer was entitled to qualified immunity. (Rikers Island, New York City Department of Corrections)

U.S. Appeals Court
PRISONER ON PRISON-
ER ASSAULT

Ashford v. U.S., 511 F.3d 501 (5th Cir. 2007). An inmate sued the United States under the Federal Tort Claims Act (FTCA) alleging that the Federal Bureau of Prisons (BOP) was negligent in placing him in a prison population with a gang member who had attacked him in the past. The district court entered summary judgment for the BOP and the inmate appealed. The appeals court reversed and remanded. The court held that the discretionary-function exception to FTCA did not apply if the inmate raised a concern at a prison intake interview that he would be endangered if he were placed in the prison population with the gang member. The court noted that a prison policy required that the inmate be put into solitary confinement pending an investigation if he raised such a concern, leaving prison officials with no discretion. According to the court, genuine issues of material fact existed as to whether the inmate raised a concern at the prison intake interview, precluding summary judgment. (Federal Bureau of Prisons)

U.S. District Court
SUICIDE

Branton v. City of Moss Point, 503 F.Supp.2d 809 (S.D.Miss. 2007). The son of a pre-trial detainee who had committed suicide while in custody, filed suit against the city and jail officers asserting claims pursuant to the Eighth and Fourteenth Amendments for failure to train, failure to adopt a policy for safe custodial care of suicidal detainees, and failure to adopt a policy of furnishing medical care to suicidal detainees. The detainee was detained on suspicion of drunk driving and was resistant during the booking process. During the booking process the detainee answered a series of questions. When he was asked, "Have you ever attempted suicide or are you thinking about it now?" he responded, "No." He was taken to a cell that was designated for intoxicated or combative prisoners, given a sheet and a blanket, and was locked in the cell at 3:30 a.m. While conducting a jail check at approximately 5:30 a.m., an officer discovered the detainee kneeling in a corner of the cell with the sheet around his neck. He was unable to be revived. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether jail officers had actual knowledge of a substantial risk of suicide by the detainee, and that fact issues precluded summary judgment in the claim against the city and officers in their official capacities. On appeal (261 Fed.Appx. 659), the appeals court reversed and remanded. (City of Moss Point, Mississippi)

U.S. 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
OFFICER ON
PRISONER ASSAULT

Collins v. Kearney, 495 F.Supp.2d 466 (D.Del. 2007). A state prisoner brought a civil rights action under § 1983 against a prison warden, sergeant, corrections officers, nurse, and a physician, alleging claims for excessive force, assault and battery, and deliberate indifference to serious medical needs. The district court granted summary judgment for the defendants in part, and denied in part. The district held that summary judgment was precluded by genuine issues of material fact as to whether the prisoner lunged toward a corrections officer, whether the amount of force used by officers was reasonably related to the need, and whether corrections officers' use of force against prisoner was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the purpose of causing harm. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether a sergeant failed to protect the prisoner when the prisoner was allegedly attacked by other corrections officers. (Sussex Correctional Institute, Delaware)

<p>U.S. District Court OFFICER ON PRISONER ASSAULT SEXUAL ASSAULT</p>	<p><i>Davis v. U.S.</i>, 474 F.Supp.2d 829 (N.D.Tex. 2007). An inmate who was raped by a prison officer in a federal medical center brought a Federal Tort Claims Act action against the United States, alleging negligence on the part of other prison officers. The district court denied the defendants' motion for summary judgment. The court found that summary judgment was precluded by genuine issues of material fact as to whether the prison officers were working within the scope of their employment when they led the inmate to another officer who raped her, whether the officers violated a duty to protect the inmate from harm, and whether their violations proximately caused the inmate's injury. (Federal Medical Center-Carswell, Texas)</p>
<p>U.S. District Court RELEASE</p>	<p><i>Dickens v. District of Columbia</i>, 502 F.Supp.2d 90 (D.D.C. 2007). A decedent's sister brought a wrongful death action against a railroad and the District of Columbia after the decedent was struck and killed by a train shortly after his release from prison. The defendants moved to dismiss the complaint. The district court granted the railroad's motion and denied the District's motion. The decedent's sister alleged that her brother was severely mentally ill and was released from the D.C. Jail without adequate preparation and without informing his relatives, which led to his death. (District of Columbia)</p>
<p>U.S. District Court PRISONER ON PRISON- ER ASSAULT</p>	<p><i>Eichelman v. Lancaster County</i>, 510 F.Supp.2d 377 (E.D.Pa. 2007). A detainee brought a § 1983 action against a county, the warden of the county prison, and a corrections officer, seeking monetary relief relating to his treatment while detained in the county prison for a short period of time. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the corrections officer acted with deliberate indifference to the detainee's safety when he informed inmates of the arrival of the detainee charged with shooting incident involving a two-year old boy. The officer knew that the detainee was not in protective custody but rather was in the general population among violent offenders with whom he would have contact and was housed in a cell furthest from the guard post. The inmate subsequently suffered injuries at the hands of other inmates. The court also found genuine issues of material fact as to whether the officer acted recklessly and callously by intentionally inciting inmate animosity toward the detainee and as to whether he acted with an awareness of the risk that his actions would result in serious harm to the detainee when other inmates inevitably would have access to him. (Lancaster County Prison, Pennsylvania)</p>
<p>U.S. District Court SUICIDE</p>	<p><i>Estate of Hill v. Richards</i>, 525 F.Supp.2d 1076 (W.D.Wis. 2007). The estate of a county jail inmate who committed suicide sued the social worker who interviewed the inmate shortly before her suicide, claiming deliberate indifference to the inmate's suicidal mental condition, in violation of the Eighth Amendment. The social worker moved for summary judgment. The court held that summary judgment was precluded by fact issues as to whether the worker was aware of a suicide risk, as the result of a statement by the inmate that she had poked herself with a thumbtack, and as to the adequacy of the worker's response to the inmate's statement. The court noted that expert testimony was not required to establish that the social worker violated the Eighth Amendment by being deliberately indifferent to the health and safety of the jail inmate; under those circumstances a jury of laypersons could conclude that there was a duty to protect the inmate. The social worker knew, from her experiences with the inmate, that the inmate had a history of depression, that she had been prescribed multiple medications for depression and that she previously had expressed a desire to die. The social worker also knew that the inmate had not been taking her medication for several weeks and that she was being housed in segregation at the jail, where neither other prisoners nor staff could easily monitor her. (Dane County Jail, Wisconsin)</p>
<p>U.S. District Court SUICIDE WRONGFUL DEATH</p>	<p><i>Estate of Puza v. Carbon County</i>, 586 F.Supp.2d 271 (M.D.Pa. 2007). The estate of a pretrial detainee who committed suicide brought an action alleging civil rights violations against a county and its corrections officers, and negligence claims against the architect of a county prison. The defendants moved for summary judgment and the district court granted the motion. The court held that correctional and intake officers were not deliberately indifferent to the pretrial detainee's vulnerability to suicide, as was required for the officers' liability under the due process clause for the detainee's suicide. The court noted that the suicide was a "complete surprise" to the police chief who spent one and a half hours with the detainee, the detainee told an officer "he had much to look forward to, and [did] not believe in suicide," the detainee was placed in a cell next to an inmate who was on suicide watch and could be regularly observed, and the officer intervened when he noticed the detainee was still kneeling during a second observation of the detainee. The court found that county employees, through the jail's suicide policy, were not deliberately indifferent as to whether the pretrial detainee successfully committed suicide, as required to support a due process claim. According to the court, the policy was annually reviewed by the Pennsylvania Department of Corrections and was never found deficient, the detainee's screening form did not trigger a suicide watch, and the employees acted without deliberate indifference in allowing the detainee to retain his shoelaces while in his jail cell.</p> <p>The court held that under the Pennsylvania negligence law, architects who designed the jail had no duty to prevent the suicide of the detainee who strangled himself by tying his shoelace to a ventilation grate above a toilet and applying pressure to his neck. According to the court, there was no direct causal connection between any alleged negligence by the architects and the detainee's suicide. According to the court, while Pennsylvania courts had not addressed this specific issue, other jurisdictions have held that an architect cannot be held liable for a prison suicide: (1) in an Oregon case "We refuse to extend suicide liability to architects, contractors, engineers, and a vast array of other parties involved with the design and construction of buildings...Architects and contractors should not be exposed to endless suicide liability when they have relinquished their authority and control over the facility to the owner;" (2) in an Illinois case "The magnitude of the burden placed on architects to eliminate all fixtures, such as grilles, that might be of aid in the commission of a suicide and, at the same time, to design an attractive and feasible cell at a reasonable cost would seem to be great;" and in an Alabama case</p>

“We hold ... that an architect designing a prison or jail owes no duty to design the prison or jail to be suicide-proof.” (Crabtree, Rohrbaugh & Associates, Carbon County Prison, Pennsylvania)

U.S. Appeals Court
SUICIDE

Forgan v. Howard County, Tex., 494 F.3d 518 (5th Cir. 2007). The family of a county jail inmate who committed suicide brought an action against the county, county sheriff's department, and various jail officers, alleging deliberate indifference under § 1983 and claims under the Texas Tort Claims Act (TTCA). The inmate was arrested for driving while intoxicated and possession of marijuana. During the booking process, the inmate indicated that he was medicated for a number of mental ailments, including depression, but that he was not thinking about killing himself at the time. Based on this and other information, a jail officer classified the inmate as a “risk” for suicide, meaning that he would be checked every fifteen minutes. The inmate was issued a pair of trousers and a shirt to wear, and he was placed in a holding cell. After approximately one hour, the inmate was found hanging from his jail-issued trousers. The district court granted summary judgment in favor of defendants and the family appealed. The appeals court affirmed. The appeals court held that providing a county jail inmate with non-defective trousers, which the inmate later used to commit suicide, did not equate to “use of property” by the county, within the meaning of the TTCA, and that the county was not liable under § 1983. According to the court, the county was not liable in the § 1983 deliberate indifference claim absent a showing that the county lacked an adequate suicide prevention policy for jail inmates, or that the county failed to adequately train its jail officials in suicide prevention. The court noted that proof of a single incident generally will not support a finding of inadequate training as a matter of custom or policy, for the purpose of establishing § 1983 municipal liability. (Howard County Jail, Texas)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Gayton v. McCoy, 521 F.Supp.2d 841 (C.D.Ill. 2007). A wrongful death action was brought on behalf of an inmate who died in a county jail. The defendants moved to bar the testimony of the plaintiff's expert, a physician. The court granted the motion, finding that the physician was not qualified to render expert testimony, and that the physician's opinion as to the cause of the inmate's death was not reliable. According to the court, the physician was not qualified to render an expert opinion on the inmate's cause of death, which he opined was cardiac-related, because the physician was not a cardiologist and had no specialty training in cardiology. The court noted that the physician stated in his deposition that, if the inmate had been his patient, he would have referred her to a cardiologist, and he also testified that he did not have the expertise to opine on what was exactly the most likely terminal event. On appeal (593 F.3d 610) the court held that a fact issue precluded summary judgment for the nurse on the due process claim. (Peoria County Jail, Illinois)

U.S. Appeals Court
PRISONER ON PRISON-
ER ASSAULT

Guzman v. Sheahan, 495 F.3d 852 (7th Cir. 2007). A pretrial detainee brought a § 1983 action against county jail officials and a sheriff alleging violations of his right to due process as guaranteed by the Fourteenth Amendment. The district court granted the defendants' motion for summary judgment and the detainee appealed. The appeals court affirmed. The court held that a corrections officer was not deliberately indifferent to the detainee's safety and welfare, as required for the detainee's § 1983 due process claim, arising out of a fight with another inmate and resulting in serious injury to the detainee. The court noted that the detainee had never before interacted with the inmate involved in the altercation nor had he ever communicated to the corrections officer or to anyone else that the inmate might be a specific danger to him. Immediately after the fight broke out, the officer called for back-up. The court held that there was no evidence that the sheriff had knowledge that the classification and reclassification of inmates were being poorly implemented by corrections officers, as required for the detainee's § 1983 official capacity claim against the sheriff. (Cook County Jail, Illinois)

U.S. District Court
SEXUAL ASSAULT
OFFICER ON PRISONER
ASSAULT

Heckenlaible v. Virginia Peninsula Regional Jail Authority, 491 F.Supp.2d 544 (E.D.Va. 2007). An inmate brought an action against a correctional officer and regional jail authority, seeking to recover monetary relief for injuries suffered as a result of an allegedly nonconsensual sexual encounter between her and the officer. The jail authority moved for summary judgment. The district court granted the motion in part, and denied in part. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officer, whose duties required him to observe inmates in the shower, was acting within the scope of his employment when he allegedly sexually assaulted the inmate after he observed her showering and during a “cell search” thereafter. The court held that the inmate's deposition testimony that she was the victim of a sexual assault by the correctional officer was sufficient to preclude summary judgment in favor of the jail authority on her intentional infliction of emotional distress claim. The court found that absent evidence indicating that the correctional officer was known by anyone to have a propensity to commit sexual assault at the time he was hired, or evidence indicating that some testing would have revealed that the officer would pose a danger to inmates, the jail authority was not liable under Virginia law on the inmate's negligent hiring claim. The court also found that since the jail authority never received any complaints from inmates about the officer, and swiftly investigated the matter and took appropriate action upon learning that a sexual encounter had occurred, it was not liable for negligent retention. (Virginia Peninsula Regional Jail)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Jenkins v. DeKalb County, Ga., 528 F.Supp.2d 1329 (N.D.Ga. 2007). Survivors of a county jail detainee who had died as the result of an apparent beating by a fellow inmate brought a § 1983, Eighth and Fourteenth Amendment action against a county sheriff in his individual capacity, and against corrections officers. The defendants moved for summary judgment on qualified immunity grounds. The district court granted the motion. The 71 year old pretrial detainee suffered from multiple mental illnesses including schizophrenia and dementia, which reportedly manifested themselves in the form of delusions, paranoia, bizarre thoughts and behavior, physical violence, and verbal outbursts that included racial epithets. The court held that county corrections officers' putting the inmate into a cell different from the one to which he had been assigned, allegedly leading to the beating death of a pretrial detainee who shared the same cell, did not violate the detainee's right against cruel and unusual punishment. The court noted that even though the action violated a jail policy, the policy was created primarily to keep track of inmates' placement, not to maintain inmate safety, and there was no evidence

of widespread inmate-on-inmate violence due to the misplacement of inmates. The court found that the plaintiffs failed to show that the sheriff's alleged poor training and supervision of corrections officers led to the officers' allegedly inadequate reaction to the incident between the jail inmates, which ended with the beating death of one inmate. The court also found that the sheriff's failure to comply with a court order to transfer the pretrial detainee to a mental health facility did not show supervisory liability because the purpose of the transfer order was likely to get the detainee treatment for mental illness, not to protect him. The court held that the county corrections officers were acting within the scope of their duties when they mistakenly placed a fellow inmate in the same cell with a pretrial detainee, and thus the officers were eligible for qualified immunity in the detainee's survivors' § 1983 Eighth and Fourteenth Amendment action. The court noted that the fact that the mistake violated jail policies or procedures did not mean that the officers were not exercising discretionary authority. (DeKalb County Jail, Georgia)

U.S. District Court
OFFICER ON PRISONER
ASSAULT

Johnson v. Tedford, 616 F.Supp.2d 321 (N.D.N.Y. 2007). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights by verbally and physically assaulting him, and then denying him adequate medical care for the injuries he sustained in that assault. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate filed a medical care grievance that was not responded to, recorded, or assigned a grievance number. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the sergeant who supervised the state corrections officers who allegedly assaulted the inmate also had supervisory authority over the nurse who treated the inmate. The inmate alleged that the sergeant was grossly negligent in supervising the nurse when she engaged in the examination of the inmate. (Clinton Correctional Facility, New York)

U.S. District Court
PRISONER ON
PRISONER ASSAULT
STAFFING

Jurado Sanchez v. Pereira, 525 F.Supp.2d 248 (D.Puerto Rico 2007). A prisoner's next of kin brought a civil rights action under § 1983 against prison officials, seeking to recover damages for the prisoner's death while he was incarcerated, and alleging constitutional rights violations, as well as state law claims of negligence. The officials moved for summary judgment on the cause of action under § 1983. The district court denied the motion, finding that summary judgment was precluded by the existence of genuine issues of material fact on the failure to protect claim and as to whether the officials had qualified immunity. According to the court, genuine issues of material fact existed as to whether there were enough guards at the prison when the prisoner was killed by another inmate, and whether officials were mandated to perform weekly or monthly searches of cells, which could have prevented the accumulation of weapons used in the incident in which the prisoner was killed. Bayamon 308, an intake center, was considered minimum security with some limitations. The inmate capacity at Bayamon 308 is 144. Although the capacity was not exceeded, some cells, despite being originally built for one inmate, housed two inmates. According to the court, Bayamon 308 does not comply with the 55 square footage minimum requirements for each cell in a continuing federal consent order. Therefore, the individual cell gates are left continuously open, like an open dormitory. At the time of the incident officials did not take gang affiliation into consideration when segregating prisoners. The prisoner did not identify himself as a gang member, nor inform officials that he feared for his life. The facility was under court order to follow a staffing plan that stated the minimum amount of staff, the optimum amount, the fixed positions and the movable positions, pursuant to a lawsuit. Fixed positions, such as control units, cannot be changed under any circumstances, but the movable positions may be modified depending on necessity due to the type of inmate at the facility. The plaintiffs alleged that the defendants did not comply with the staffing plan, while the defendants insisted that they did comply. (Bayamon 308 Facility, Puerto Rico)

U.S. District Court
MEDICAL CARE
SUICIDE

Justus v. County of Buchanan, 517 F.Supp.2d 810 (W.D.Va. 2007). The administrator of a pretrial detainee's estate filed a § 1983 action against a sheriff and county jail employees arising out of the detainee's jail suicide. The detainee had a history of schizophrenia, bipolar disorder, anxiety, paranoia, and delusions and had been hospitalized for these conditions several times in the three years prior to his suicide. His treatment records show that he was hospitalized because family members reported suicidal ideation and bizarre, violent, and sexually inappropriate behavior. The defendants moved for summary judgment. The district court granted the motion. The court held that the sheriff's deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to deliberate indifference to the detainee's serious bodily injuries, in violation of the detainee's due process rights. The court noted that, even though the detainee was still alive when they took him down approximately 13 minutes after discovering him, there was no showing of an affirmative causal link between their inaction and the detainee's death from hypoxic brain injury.

The court found that the sheriff was not deliberately indifferent to the pretrial detainee's suicidal nature, and thus was not subject to liability under § 1983 for failing to take steps to prevent his suicide, even though a notation on an incident report two months before the detainee's suicide indicated that another prisoner reported that the detainee "was threatening suicide". The court found no proof that the report did not simply inadvertently escape the sheriff's knowledge.

The court held that a reasonable sheriff would not have understood from existing law that the absence of an operating video surveillance system in the county jail would violate a suicidal pretrial detainee's constitutional rights, and thus the sheriff was entitled to qualified immunity from liability under § 1983, even though the jail policy and procedure manual required immediate repair of any defective security equipment, and the sheriff was aware that the equipment had not been operating for some time.

According to the court, under Virginia law, the deputies' failure to provide the pretrial detainee with prompt medical care after they discovered him hanging in his cell did not amount to gross negligence as required to overcome their immunity from tort liability. (Buchanan County, Virginia)

U.S. District Court SUICIDE	<i>Justus ex rel. Estate of Justus v. County of Buchanan</i> , 498 F.Supp.2d 883 (W.D.Va. 2007). An estate brought a § 1983 action against various state and county defendants arising out an inmate's jail suicide. The inmate was found hanging by the neck in his cell by a bed sheet. He was taken down and transported to a hospital, but later died. The estate filed an amended complaint in which the county sheriff was added as a defendant. The county sheriff moved to dismiss. The district court denied the motion, finding that the county sheriff reasonably should have known that he was a proper defendant in the action. (Buchanan County Jail, Virginia)
U.S. Appeals Court OFFICER ON PRISONER ASSAULT SEXUAL ASSAULT	<i>Kahle v. Leonard</i> , 477 F.3d 544 (8th Cir. 2007). A female pretrial detainee sued a deputy sheriff under § 1983, alleging that the deputy was deliberately indifferent to a substantial risk that she would be sexually assaulted by a correctional officer. The district court denied the deputy's motion for summary judgment seeking qualified immunity. The deputy appealed and the appeals court affirmed. The court held that genuine issues of material fact existed as to whether a county jail official was aware of a substantial risk of serious harm from a male correctional officer's alleged action of going to a female inmate's cell three times after lockdown, and as to whether the official exhibited deliberate indifference to that risk, precluded summary judgment as to whether the official was liable under § 1983 for due process violations. The court found that, for purposes of qualified immunity, the law was clearly established at the time of the detainee's assault (December 2002) that it would violate a county jail inmate's due process rights for a jail official to exhibit deliberate indifference to a substantial risk that a correctional officer would sexually assault the inmate, and that a supervisor who was deliberately indifferent to a substantial risk of such assault could be held liable under § 1983. (Pennington County Jail, South Dakota)
U.S. District Court PRISONER ON PRISONER ASSAULT	<i>King v. County of Gloucester</i> , 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 PRISONER ON PRISONER ASSAULT	<i>Lee v. Corrections Corp. of America</i> , 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 OFFICER ON PRISONER ASSAULT SEXUAL ASSAULT	<i>Meyer v. Nava</i> , 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 female 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. The court found that the former county jail employee's actions in sexually assaulting the former prisoner were not within the scope of his employment, and thus the county and sheriff were not subject to liability for the actions under the Kansas Tort Claims Act (KTCA). According to the court, the employee was acting for his personal benefit and not in furtherance of any business of the county, there was no express or implied authority to perform the acts in which he engaged, and the acts were not foreseeable in the furtherance of his duties. (Lyon County Jail, Kansas)
U.S. District Court SUICIDE ATTEMPT	<i>Mombourquette ex rel. Mombourquette v. Amundson</i> , 469 F.Supp.2d 624 (W.D.Wis. 2007). A pretrial detainee in a county jail who was left seriously brain damaged after she attempted suicide by hanging in her cell, brought a civil rights suit against a county sheriff, correctional officers, and jail nurses, alleging that they violated her constitutional rights by failing to protect her from harming herself. The defendants filed motions for summary

judgment. The district court denied the motions. The court held that evidence that the pretrial detainee reported to county jail personnel that a jail lieutenant was taking another female inmate out of her cell at night to engage in sexual activity was admissible, because such evidence showed that the lieutenant had a strong motive to withhold protection from the detainee, and thus was relevant to show he intentionally disregarded a risk to the detainee's safety. The court also found that evidence that county sheriff refused to investigate allegations that the county jail lieutenant was engaging in sexual misconduct with another inmate was relevant and admissible, where the sheriff's dismissive attitude of the complaint exhibited deliberate indifference, both toward the detainee's health and safety in particular and generally toward the health and safety of all inmates. The court denied summary judgment because it found a genuine issue of material fact as to whether a nurse and correctional officers at the county jail were deliberately indifferent to pretrial detainee's health and safety. The court also found a genuine issue of material fact as to whether there was an affirmative link between the county sheriff's failure to properly train and supervise county jail personnel and the failure to prevent the detainee's suicide. (Monroe County Jail, Wisconsin)

U.S. District Court
SEXUAL ASSAULT
PRISONER ON PRISON-
ER ASSAULT

Nillson-Borrill v. Burnheimer, 505 F.Supp.2d 180 (D.Me. 2007). A female former inmate who was allegedly raped by a male inmate while she was incarcerated brought a civil rights action against a prison superintendent. The superintendent moved to dismiss. The district court granted the motion in part and denied in part. The district court held that the Maine Civil Rights Act permits a deliberate indifference claim against a corrections superintendent, based solely upon violence that a prisoner suffered at the hands of a fellow inmate, and claims against officers in their official capacities were barred by the Eleventh Amendment. (Maine Correctional Center)

U.S. Appeals Court
PRISONER ON PRISON-
ER ASSAULT

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
OFFICER ON PRISONER
ASSAULT

Orange v. Fielding, 517 F.Supp.2d 776 (D.S.C. 2007). A pretrial detainee brought a § 1983 action against two detention center administrators to recover for a beating by officers. The court granted summary judgment in favor of one administrator, and denied the other administrator's motion. The court held that the detainee's conclusory statements in an affidavit, that the administrator was aware of an officer's aggressiveness toward inmates and failed to protect the detainee, were insufficient to preclude summary judgment. The court found that the detainee's affidavit stating that he spoke with the administrator several times about danger from officers, but that the administrator failed to take action, raised genuine issues of material fact, precluding summary judgment in favor of the other administrator. (Georgetown County Detention Center, South Carolina)

U.S. District Court
PRISONER SUICIDE
WRONGFUL DEATH

Probst v. Central Ohio Youth Center, 511 F.Supp.2d 862 (S.D. Ohio 2007). A plaintiff, on behalf of the estate of her son who committed suicide while incarcerated at juvenile detention facility, brought a wrongful-death action against the facility, its superintendent, a non-profit provider that performed suicide evaluations at the facility and a social worker employed by the provider. The plaintiff asserted claims under § 1983 and state law. The facility and non-profit moved for summary judgment. The district court denied the motion. The court held that under the state compulsion test, the private provider that performed suicide evaluations at that the juvenile detention facility was not a "state actor" for § 1983 purposes. The court noted that the facility did not exert any control over suicide evaluations and the provider performed evaluations on an as-needed basis using its own standards and procedures. According to the court, the facility had discretion to implement the provider's recommendations resulting from the evaluations. But the court held that the private provider was a state actor for § 1983 purposes because it was performing a "public function." (Central Ohio Youth Center)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Rigano v. County of Sullivan, 486 F.Supp.2d 244 (S.D.N.Y. 2007). An inmate brought § 1983 and negligence claims against a county, county sheriff, jail administrator, corrections officers and fellow inmates, alleging that he was harassed and beaten by the inmate defendants while serving his sentence at the county jail, in violation of the Eighth Amendment. The district court granted summary judgment for the defendants. The court held that the county jail's procedure for determining where and in what manner new inmates were to be housed did not amount to deliberate indifference to the inmate's safety, as would violate the Eighth Amendment, despite the fact that the inmate was allegedly harassed and physically assaulted by other inmates in the cell block where he was placed. The court noted that, pursuant to the jail's placement procedure, corrections officers asked each inmate a series of questions to assist in placing them, including questions about any enemies the inmate had in the current prison population, the inmate failed to indicate when asked any reason why he should not be placed in the general prison population, and the officers had no reason to know that the inmate would be harassed and assaulted by other inmates. The court found that physical checks of the jail inmate by corrections officers were adequate and did not amount to "deliberate indifference" to the inmate's safety, as would violate Eighth Amendment, despite the fact that the inmate was allegedly harassed and physically assaulted by other inmates in the cell block where he was placed. The officers made visual inspections from outside the cell tier every fifteen minutes and conducted head counts. The inmate never informed the officers of the harassment, and once the

officers knew the inmate was being assaulted, they immediately removed him from the tier and provided him with medical attention. The court noted that the Eighth Amendment does not guarantee an assault-free prison environment; it promises only reasonable good faith protection. (Sullivan County Jail, New York)

U.S. Appeals Court
THREATS
PRISONER ON PRISON-
ER ASSAULT

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

U.S. District Court
PRISONER ON PRISON-
ER ASSAULT

Saunders v. U.S., 502 F.Supp.2d 493 (E.D.Va. 2007). A pretrial detainee brought an action under the Federal Tort Claims Act (FTCA) seeking to hold the United States liable for injuries that he suffered during a fight at a state jail while in federal custody. The district court granted the defendant's motion to dismiss. The court held that the detainee's claim that the United States Marshals Service acted negligently in placing him in an unsafe state jail, and in failing to respond to his verbal concerns about his safety, involved discretionary decision making, and thus fell within the scope of the Federal Tort Claims Act (FTCA) discretionary function exception. The court noted that there was no allegation that the Marshals Service had any knowledge of unsafe conditions at the jail other than an apprehension expressed by the detainee himself. (Western Tidewater Regional Jail, Virginia)

U.S. District Court
ELECTRONIC MONI-
TORING
SUPERVISION
STAFFING

Thomas v. Sheahan, 499 F.Supp.2d 1062 (N.D.Ill. 2007). A special administrator filed a § 1983 suit against a county, sheriff, county board, correctional officers, supervisors, and a correctional medical technician, on behalf of a pretrial detainee who died at a county jail from meningitis and pneumonia. The administrator alleged violations of the detainee's constitutional rights and state law claims for wrongful death, survival action, and intentional infliction of emotional distress. The defendants moved for summary judgment and to strike documents. The district court granted the motions in part and denied in part. The court did not strike all of the plaintiff's summary judgment submissions, for allegedly failing to disclose witnesses or individuals with relevant information who submitted affidavits, given that the plaintiff had disclosed witnesses prior to discovery deadline.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether the detainee's illness was an objectively serious medical need, and whether correctional officials and a correctional medical technician were aware of the detainee's serious medical symptoms. The court found that the supervisors of the correctional officers were not deliberately indifferent to the detainee's serious medical condition, where the officers did not contact their supervisors about the detainee until the morning that he died, the supervisors obtained medical care for the detainee, and the supervisors were not responsible for security checks or rounds of jail. The court also found that summary judgment was precluded on the issue of causation due to a genuine issue of material fact as to whether the county was deliberately indifferent to its widespread practice of failing to train its employees on how to handle inmate medical requests at the county jail. Summary judgment was also precluded by genuine issues of material fact as to whether the county was deliberately indifferent to: (1) its widespread practice of understaffing correctional officers at the county jail; (2) its widespread practice of failing to repair broken video monitoring systems for inmate surveillance at the jail; and, (3) its widespread policy or practice of falsifying daily logs to cover up missed security checks on inmates. (Cook County Jail, Illinois).

U.S. District Court
PLRA- Prison Litigation
Reform Act
PRISONER ON PRISONER
ASSAULT
WRONGFUL DEATH

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. Appeals Court
SUICIDE

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. Appeals Court
OFFICER ON PRISONER
ASSAULT

U.S. v. Miller, 477 F.3d 644 (8th Cir. 2007). A supervisor at a county detention center was convicted in the district court of depriving two prisoners of their Eighth Amendment right to be free from cruel and unusual punishment. The supervisor appealed and the appeals court affirmed. The court held that there was sufficient evidence that the supervisor acted maliciously and sadistically toward the prisoner, in violation of the Eighth Amendment prohibition against cruel and unusual punishment, even though the supervisor could have inflicted even greater injuries upon the prisoner. Evidence indicated that the supervisor punched the prisoner when there was no legitimate reason to do so, kicked the prisoner, and stomped on the prisoner while he was lying on the ground. The court noted that the assailing officer's ability to inflict greater injuries upon a prisoner does not make an attack any less malicious or sadistic, for the purposes of the Eighth Amendment prohibition against cruel and unusual punishment. The court held that the prisoner's medical records, which did not identify the supervisor as the individual responsible for the prisoner's injuries, were admissible under the medical treatment or diagnosis exception to the hearsay records. (Craighead County Detention Facility, Arkansas)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Warren v. Goord, 476 F.Supp.2d 407 (S.D.N.Y. 2007). An inmate whose face was slashed by an unidentified assailant brought a pro se suit under § 1983 against corrections officials, claiming that their failure to install metal detectors at the entrance to a prison yard constituted an Eighth Amendment violation. The inmate sought damages and injunctive relief. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the inmate stated an Eighth Amendment claim under § 1983 for failure to protect, where his allegations regarding the attack sufficiently pled that he was put at a substantial risk of serious harm, and the prison officials' alleged tolerance for weapons in the prison yard and resulting inmate attacks may have risen to the level of disregarding a substantial and pervasive risk of violence. The court found that the inability of the inmate to identify the superintendent of security at a correctional facility was not fatal to his "John Doe" claim against the superintendent. The court declined to dismiss the claim until the inmate had had sufficient discovery to name the defendant. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
THREATS
PRISONER ON PRISON-
ER ASSAULT

Young v. Selk, 508 F.3d 868 (8th Cir. 2007). A prisoner who was attacked by his cellmate brought a § 1983 action against a state department of corrections and its officials, alleging failure to protect in violation of the Eighth Amendment. The district court granted summary judgment to the department and certain officials, but denied summary judgment for two corrections officers. The officers appealed. The appeals court affirmed. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the officers were deliberately indifferent to the substantial risk of serious harm to the prisoner. The prisoner had reported to the officers that his new cellmate had threatened him and requested an immediate transfer. (Minnesota Correctional Facility-Rush City)

2008

U.S. Appeals Court
TRANSPORTATION

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

U.S. Appeals Court
PRISONER SUICIDE

Brumfield v. Hollins, 551 F.3d 322 (5th Cir. 2008). The daughter of a detainee who hung himself while confined in a "drunk tank" of a county jail brought a § 1983 action against the county, and a sheriff and deputies in their individual and official capacities. The district court awarded summary judgment to each defendant sued in his individual capacity on the basis of qualified immunity, but denied summary judgment to individual defendants in their official capacities and to the county. After a trial, the district court directed a verdict in favor of all officers and the county. The daughter appealed. The appeals court affirmed. The court held that the sheriff was protected by qualified immunity and that the district court did not abuse its discretion by excluding expert testimony indicating that the detainee was alive when paramedics arrived at the jail. The court found that the county was not liable under § 1983. According to the court, the sheriff was entitled to qualified immunity from the claim that he failed to adopt any written policy pertaining to inmate supervision or medical care, where verbal policies existed concerning inmate supervision and medical care. The court found that the sheriff's efforts in training and supervising deputies were not deliberately indifferent, as required for the sheriff to be liable under § 1983 for the

suicide of a drunk driving detainee. The court noted that the deputies did receive training, and that there was no evidence of a pattern of similar violations or evidence that it should have been apparent that a constitutional violation was the highly predictable consequence of an alleged failure to train. The court found that while the deputies' conclusion that the detainee who had hung himself was already dead, and their resulting failure to make any attempt to save his life, were arguably negligent, this conduct alone did not amount to deliberate indifference, nor was any county custom or policy the moving force behind the deputies' conduct, as required for the county to be liable under § 1983 for denial of reasonable medical care. (Marion County Jail, Mississippi)

U.S. District Court
PROTECTION FROM
HARM

Buckley v. Barbour County, Ala., 624 F.Supp.2d 1335 (M.D.Ala. 2008). An inmate brought § 1983, Eighth Amendment and due process claims, as well as state law claims, against a county and a work-crew supervisor, alleging that his back was injured as the result of a failure to train him in equipment safety before he cleared trees as part of a prison work crew. The county and supervisor filed separate motions to dismiss. The district court granted the motions in part and denied in part. The court held that the inmate's allegations that the county failed to train him and another inmate in equipment operations safety, that they were ordered while part of a community work squad to use chainsaws to cut a large oak tree to clear it from a roadway, and that the tree rolled onto the inmate, breaking his back, were sufficient to plead a causal connection between the county's practice or custom of failing to train and the inmate's injury. The court noted that the inmate was not required to allege a specific practice or custom of failing to train inmates to avoid falling trees. The court held that the inmate's allegations were also sufficient to show the county's awareness of facts from which an inference of a substantial risk of harm could be drawn, as required to plead a deliberate indifference § 1983 Eighth Amendment claim. According to the court, the inmate's allegations that a prison work-crew supervisor was aware that the inmate was not trained in equipment safety and felt unqualified to use a chainsaw, yet still ordered the inmate to use a chainsaw to cut a fallen tree hanging over a ditch, were sufficient to plead a § 1983 Eighth Amendment claim against the supervisor. The court also denied qualified immunity from the inmate's allegations. According to the court, under Alabama law, the inmate's allegations that the work-crew supervisor ordered him and another inmate to cut a tree hanging over a ditch with chainsaws, with the knowledge they were not trained in equipment safety, and that the tree rolled onto the inmate breaking his back, were sufficient to plead willful negligence by the supervisor. (Barbour County Community Work Squad, Alabama)

U.S. Appeals Court
MEDICAL CARE

Burnette v. Taylor, 533 F.3d 1325 (11th Cir. 2008). The father of a detainee who died while in custody in a county jail brought a § 1983 claim against county sheriff's deputies and jailers, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion for summary judgment on qualified immunity grounds. The defendants appealed. The appeals court reversed and remanded. The court held that the arresting officers were not deliberately indifferent to the serious medical needs of the detainee who died after ingesting a lethal combination of drugs while in custody in the county jail. Although the officers had been warned by the detainee's stepfather that the detainee was strung out on drugs, and one officer observed that the detainee had glassy eyes and appeared to be under the influence of something, the officers saw only that the detainee possessed a bottle of prescription pills. The court noted that neither the detainee nor any family member requested that the detainee be given medical treatment, and the symptoms exhibited by the detainee were not necessarily indicative that medical attention was required. The court found that a jailer was not deliberately indifferent to the serious medical needs of the detainee. The jailer was in charge of dressing out the detainee before he was placed in his cell, and although the jailer found a bottle of prescription pills and observed that the detainee was wasted, the detainee advised that he had just woken up, and no one told the jailer that the detainee needed medical help or needed to be looked after. The court also held that a jailer was not deliberately indifferent to the serious medical needs of the detainee even though the jailer was aware that the detainee was in possession of a bottle of pills when he was arrested, that his speech was slurred, that he needed assistance when he was moved from one cell to another and that his eyes were rolling back in his head at that time, and that the detainee was making a snoring sound at the time of one bed check. According to the court, the jailer was never aware that the detainee could have ingested a lethal amount of drugs, no one ever recommended to the jailer that the detainee be placed in a holding cell or otherwise be observed, and the jailer observed the detainee laughing and talking with his cellmates at one point. (Bacon County Jail, Georgia)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
THREATS

Dale v. Poston, 548 F.3d 563 (7th Cir. 2008). A federal prison inmate brought a Bivens action against several corrections officers, alleging deliberate indifference in violation of the Eighth Amendment based on the officers' failure to prevent an assault by a fellow inmate. Following a jury verdict for the inmate on the issue of administrative exhaustion, the district court granted summary judgment for the officers. The inmate appealed. The appeals court affirmed. The court found that the subjective prong of the inmate's claim was unsatisfied, since the inmate had given the officers inadequate details of the danger involved. The prisoner told officers that other inmates were "pressuring" him and "asking questions," but never gave more details despite the officers' requests, preventing them from determining whether a true threat was at play. The inmate declined offers to remain in protective custody. (Federal Penitentiary, Terre Haute, Indiana)

U.S. District Court
TRANSPORTATION

Dantone v. Bhaddi, 570 F.Supp.2d 167 (D.Mass. 2008). A prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA) and against a prison doctor under Bivens, seeking to recover for injuries allegedly sustained when the seat of a van in which he was being transported collapsed. The district court denied the defendant's motion to dismiss. The court held that the prisoner's allegations that prison staff breached its duty of care in their transportation of him by failing to properly install, maintain, and inspect the seating in a transport van, and that this breach resulted in the collapse of the seat, which resulted in the injuries to his head and neck, and ongoing pain, were sufficient facts to state a negligence claim against the United States under the Federal Tort Claims Act. (Federal Medical Center, Devens, Massachusetts)

U.S. District Court PRISONER ON PRISONER ASSAULT	<p><i>Davis v. Williams</i>, 572 F.Supp.2d 498 (D.Del. 2008). A state prisoner brought a § 1983 action against a prison warden, several correctional officers, and prison medical staff, alleging that the defendants failed to protect him from a fellow prisoner even though he complained of the prisoner's conduct. The prisoner moved for summary judgment, to amend, and to appoint counsel. The court held that the prison warden's participation in an after-the-fact review of the prisoner's grievance was not enough to establish the warden's personal involvement in the prisoner's alleged constitutional deprivations, as would subject the warden to personal liability in the prisoner's § 1983 action. The court noted that there was no evidence that the warden received information from any source regarding the conduct of the prisoner's fellow inmate, or that he was aware that such conduct created an unreasonable risk of injury to the prisoner to which the warden remained deliberately indifferent. The court found that the correctional officers were not on notice that the prisoner, who was injured by a fellow inmate in a cafeteria following two basketball games in which he was allegedly "mushed" or "pushed" by the inmate, allegedly faced a substantial risk of being assaulted by the inmate and deliberately disregarded that risk, as would support the prisoner's Eighth Amendment failure to protect claim. (Delaware Correctional Center)</p>
U.S. District Court MEDICAL CARE	<p><i>Dean v. City of Fresno</i>, 546 F.Supp.2d 798 (E.D.Cal. 2008). The widow and children of a detainee who died from complications of cocaine ingestion while incarcerated in a county jail, brought an action in state court against a city and two police officers. After removal to federal court, the defendants moved for summary judgment on all claims. The district court granted the motion in part and remanded. The court found that the officers violated the detainee's Fourteenth Amendment right to medical care when they did not obtain medical aid for the detainee after he vomited in the patrol car and rock cocaine was found in the vomit. According to the court, a rational jury could conclude that the officers knew that the detainee had swallowed rock cocaine and had a serious medical condition, and that the officers did not render care themselves, did not call for paramedics, did not take the detainee to the hospital, and did not report the discovery of the rock cocaine in the vomit to the jail nurse. The court found that the officers were entitled to qualified immunity where the detainee, who did not exhibit signs of being high as his detention progressed and who was previously communicative of his symptoms, gave an inaccurate reason to explain his condition and never requested medical treatment. (City of Fresno and Fresno County Jail, California)</p>
U.S. District Court MEDICAL CARE PRISONER ON PRISONER ASSAULT	<p><i>Dolberry v. Levine</i>, 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). The court held that summary judgment was precluded by a genuine issue of material fact as to whether a prison official was present in the immediate area of an alleged unprovoked assault on the prisoner. The prisoner alleged that the official failed to intervene, and refused to allow the prisoner to get medical attention for injuries suffered in the assault. (Wyoming Correctional Facility, New York)</p>
U.S. District Court MEDICAL CARE USE OF FORCE WRONGFUL DEATH	<p><i>Estate of Harvey ex rel. Dent v. Roanoke City Sheriff's Office</i>, 585 F.Supp.2d 844 (W.D.Va. 2008). The administrator of a pretrial detainee's estate brought a civil rights action under §§ 1983, 1985, and 1986 and Virginia law, against a city sheriff's department, sheriff, deputies, and prison health providers, alleging excessive use of force, failure to train, assault, battery, conspiracy, breach of a non-delegable fiduciary duty, intentional infliction of emotional distress and wrongful death. The defendants moved for summary judgment. The district court granted the motions. The court held that the estate of the pretrial detainee who died following cardiac arrest after transfer from a jail to a hospital could not sustain a deliberate indifference claim under the Fourteenth Amendment against the employees of a prison health provider, absent evidence that they actually knew of and disregarded a serious risk of harm to the detainee, or that they actually knew of and ignored a serious need for medical care. The court noted that the city sheriff and sheriff's deputies did not knowingly disregard a substantial risk of harm to the pretrial detainee in violation of Fourteenth Amendment when they relied on medical personnel's decisions as to the appropriate course of treatment for the detainee's medical needs. The court found that the city sheriff's deputies did not act with deliberate indifference when, in an attempt to transfer the detainee to a hospital for treatment, they forcibly removed the detainee from his cell, placed him face down on a stretcher, and covered him with a blanket to stop him from spitting and throwing feces at the deputies. According to the court, there was no evidence that the deputies knew that the detainee suffered from an excited delirium or serious heart condition. The court noted that the detainee was naked, slick with feces and urine, spitting, yelling, being combative, threatening to throw more bodily fluids, trying to bite, and was HIV and Hepatitis C positive. (Roanoke City Jail, Virginia)</p>
U.S. District Court SUICIDE	<p><i>Estate of Trentadue v. U.S.</i>, 560 F.Supp.2d 1124 (W.D.Okla. 2008). In a suit arising from the death of a special housing unit (SHU) inmate at a Federal Transfer Center in Oklahoma, the district court ruled in favor of the plaintiff's family members on their claim for intentional infliction of emotional distress under the Federal Tort Claims Act (FTCA), and awarded a total amount of \$1.1 million in damages to the individual family members. On appeal, the court remanded for additional findings. On remand, the district court held that evidence supported a \$250,000 award to the inmate's wife for the extreme and outrageous actions of the federal government in the aftermath of the inmate's death and prior to her viewing the body, including the failure to inform her in advance of the numerous extensive injuries on his body and the fact that an autopsy had been performed. The court found that the siblings who were present when the numerous, extensive, and unexpected injuries to inmate's body were first discovered were entitled to awards ranging from \$150,000-\$200,000, and brothers who never personally viewed the injuries were entitled to between \$50,000 and \$100,000. The district court held that the plaintiffs' understandable emotional reaction to the inmate's death was needlessly and recklessly intensified by the United</p>

States' failure to inform the family in advance as to the existence of the extensive injuries and that an autopsy had been performed, and throughout the trial, the court heard no explanation for the defendant's silence in this regard. The inmate had been returned to prison as a parole violator and was placed in a segregation single cell at his request. The inmate was found hanging in his cell approximately 20 minutes after the previous routine cell check by correctional officers. Other cuts and abrasions found on his body indicated persistent attempts to cause himself serious injury or death. Permissible items found in the cell supported presumptions that cuts on the body were self-inflicted. (Federal Transfer Center in Oklahoma City, Oklahoma)

U.S. Appeals Court
MEDICAL CARE

Gibson v. Moskowitz, 523 F.3d 657 (6th Cir. 2008). The representative of the estate of a mentally disabled inmate who died of dehydration in a state prison brought a § 1983 action against a prison psychiatrist and others, alleging deliberate indifference to serious medical needs, and asserting medical malpractice claims. The district court denied the defendants' motion for summary judgment, and subsequently entered judgment, upon a jury verdict, in favor of the representative. The court awarded \$1.5 million in compensatory damages and \$3 million in punitive damages. The psychiatrist appealed. The appeals court affirmed in part and reversed in part.

The court held that evidence was sufficient to support a determination that the inmate had an objectively serious medical condition and that the psychiatrist subjectively ignored the inmate's serious medical needs. The court found that the compensatory damages award was not excessive and that the representative was entitled to recover punitive damages. The court found that the punitive damages award was not excessive.

According to the court, the psychiatrist was in charge of the inmate's treatment team, he admittedly was aware that the temperature in the observation room where the inmate was held exceeded 90 degrees, and that the combination of the inmate's medication and the room temperature was potentially deadly. A psychiatric expert testified that the inmate's medication affected the part of the brain that regulated body temperature and dissipated heat, and another medical expert testified that the inmate's dehydration occurred over a period of several days. Evidence was presented that during that period, the inmate lost 42 pounds. The psychiatrist never asked for the inmate's temperature to be monitored, even when he had learned from a nurse and other prison employees that the inmate had vomited. The nurse had advised the psychiatrist that the inmate was suffering from dehydration and severe weight loss, and that his condition was deteriorating. The psychiatrist did not examine the inmate, change his medication, or move the inmate to a cooler room.

The case was remanded to the district court to provide justification for its allocation of \$1.5 million in compensatory damages awarded by the jury between the § 1983 Eighth Amendment deliberate indifference claim and the medical malpractice claim. The court had allocated \$683,500, representing Michigan's high-tier non-economic damages cap to the medical malpractice claim, and the rest to the deliberate indifference claim, but it failed to provide any explanation for the allocation. The appeals court held that the allocation did not follow intuitively from the evidence, since a higher standard of culpability was required for the deliberate indifference claim. (Riverside Correctional Facility, Michigan)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Grievson v. Anderson, 538 F.3d 763 (7th Cir. 2008). A federal pretrial detainee who was a Canadian citizen and who was held in a county jail brought actions against a city and against a sheriff, jail commander, sergeant, jail officers, and the United States marshal. The detainee sued the defendants in their official and individual capacities, asserting state-law negligence and constitutional claims, § 1983 claims, and claims under the Alien Tort Claims Act. The district court granted summary judgment for the defendants and the detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that there was no evidence that jail officers knew that the detainee was perceived to be a snitch by his fellow inmates and thus that the officers knew that the detainee's placement in a barracks-style cell with 45 others posed a substantial risk of serious harm to the detainee, as required to establish the jail officers' deliberate indifference to the detainee's safety in violation of his due process rights. The court found that the repeated assaults suffered by the detainee at the hands of other jail inmates did not establish that the jail officers were subjectively aware of a specific risk to the detainee's safety, as required for the detainee to establish deliberate indifference to his safety in violation of his due process rights. The court noted that the detainee did not inform jail officers of a specific threat to his life, such as the perception that he was "snitch," but instead indicated only that he was afraid and wanted to be moved.

According to the court, the officers could not have been on notice of specific threats to the detainee's safety, when the detainee was assaulted by one inmate for taking too long to use a toilet, by another for snoring, and by another out of anger over losing a card game. The court found that the inmate was a "victim of the inherent, as it were the baseline, dangerousness of prison life." The court held that summary judgment was precluded by material issues of fact as to whether the detainee was assaulted by other inmates in the presence of a jail officer and whether the jail officer watched the assault but did not intervene to protect the detainee. (Marion County Jail, Indiana)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
SEXUAL ASSAULT

Howard v. Waide, 534 F.3d 1227 (10th Cir. 2008). An inmate brought claims against several Colorado Department of Corrections (CDOC) employees and a grievance officer pursuant to § 1983, alleging deliberate indifference in violation of the Eighth Amendment. The district court granted the grievance officer's motion to dismiss and granted the other defendants' motions for summary judgment, and the inmate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the inmate established an objective substantial risk of serious harm, as required for his Eighth Amendment deliberate indifference claim, by alleging that he had previously been targeted by a notorious prison gang because of his build and sexual orientation, that he was threatened, sexually assaulted, and prostituted against his will by members of this gang, and was later transferred to a different facility for his own safety, and, that after arriving at the new facility, he was identified by a member of the same prison gang who had assaulted him in the past and was housed in a less-restrictive area of the prison where it was easier for gang members to assault him. The court found that summary judgment was precluded by genuine issues of material fact as to whether the corrections' employees had subjective knowledge of a significant risk of substantial harm to the inmate. The court also found that summary judgment was precluded by genuine issues of material fact as to whether the employees responded to the known risk to the inmate by a prison gang in a reasonable manner. (Sterling Correctional Facility, Colorado)

- U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT
WRONGFUL DEATH
- Iko v. Shreve*, 535 F.3d 225 (4th Cir. 2008). The estate and family of a deceased inmate brought a § 1983 survival and wrongful death action against correctional officers, alleging violations of the inmate's Eighth Amendment rights. The district court granted, in part, the officers' motion for summary judgment. The officers appealed. The appeals court affirmed in part and reversed in part. The court held that an officer violated the deceased inmate's Eighth Amendment right to be free from excessive force, arising from the inmate's death after his extraction from his cell involving the use of pepper spray, and thus the officer was not entitled to qualified immunity on § 1983 claims. The court found there was no question that some dispersal of pepper spray was warranted in carrying out the extraction. But the officer's final burst of pepper spray was deployed after the inmate had laid down on the floor, and the officer and members of the extraction team never changed the inmate's clothing or removed the spit mask covering his nose and mouth and never secured medical treatment for the inmate. Although the inmate proffered his hands through the door pursuant to the officer's order, albeit in front of rather than behind him, the officer deployed several additional bursts of pepper spray even after the inmate attempted to comply with the order, and the inmate never reacted violently. (Western Correctional Institution, Maryland)
- U.S. Appeals Court
INTIMIDATION
PRISONER ON PRISON-
ER ASSAULT
THREATS
- Irving v. Dormire*, 519 F.3d 441 (8th Cir. 2008). An inmate in the Missouri penal system filed suit under § 1983 against several employees of a state correctional facility, alleging multiple violations of his constitutional rights of due process, access to the courts and freedom from cruel and unusual punishment. The district court granted the defendants' motion for summary judgment on the due process and access to courts claims, but denied the defendants' request for qualified immunity on the Eighth Amendment claim. The parties appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that the corrections officers' alleged conduct in opening cell doors so as to allow an inmate to attack the plaintiff inmate was sufficiently serious to support a failure to protect claim. According to the court, the inmate's allegations that a corrections officer made several threats to kill the inmate, have him killed or have him beaten were sufficiently serious to form the basis of an injury, as required to support the inmate's Eighth Amendment claim. The court noted that the inmate's right to be free from threats by corrections officers was clearly established at the time the corrections officer allegedly made death threats against the inmate. According to the court, an officer's alleged conduct in threatening the inmate with a can of pepper spray and another officer's conduct in stating that she wanted the inmate dead did not rise to the level of being objectively credible. The court also held that an officer was on clear notice that his alleged conduct in labeling the inmate a "snitch" or a "rat" unreasonably subjected the inmate to the threat of a substantial risk of serious harm at the hands of his fellow inmates. The officer allegedly made three unsuccessful offers of payment to other inmates to assault the inmate, labeled the inmate a snitch in an effort to induce inmates to attack him and even armed another inmate with a razor blade for use in such an attempt. (Jefferson City Correctional Center, Missouri)
- U.S. Appeals Court
MEDICAL CARE
- Jones v. Minnesota Dept. of Corrections*, 512 F.3d 478 (8th Cir. 2008). The trustee for the heirs of an inmate brought an action against a state Department of Corrections, corrections officers and prison nurse alleging deliberate indifference to the inmate's serious medical need in violation of the Eighth Amendment. The district court granted summary judgment in favor of the defendants and the trustee appealed. The appeals court affirmed. The court held that the inmate did not have a medical need so obvious that a layperson would easily recognize the need for a doctor's immediate attention, as required to establish an objectively serious medical need without a physician's diagnosis. The court found that the corrections officers and a prison nurse did not violate the Eighth Amendment prohibition against cruel and unusual punishment by deliberate indifference to the inmate's serious medical need. The court noted that although the inmate appeared to be unable to stand or walk under her own power, did not respond to officers' directions, rolled on the ground grunting and groaning and had dried blood and cuts on her lips, prison personnel had no background knowledge that made it obvious that those symptoms required medical attention and the inmate never expressed a need for medical attention. (Blue Earth County Jail and Minnesota Correctional Facility- Shakopee)
- U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
THREATS
- Klebanowski v. Sheahan*, 540 F.3d 633 (7th Cir. 2008). A detainee who was being held for trial brought a § 1983 action against a sheriff, a jail and its officers, alleging deliberate indifference to risks of housing gang members with non-gang members, which caused attacks on the detainee by gang members. The detainee had suffered two attacks at the hands of his fellow prisoners. The defendants moved for summary judgment. The district court granted the motion and the detainee appealed. The appeals court affirmed. The court held that the allegation by the detainee that his attack by gang members was brought on by the jail's policy of housing gang members with non-gang members, allowing them weapons, and periodically leaving them unattended, did not sufficiently establish an unconstitutional policy, for purposes of establishing deliberate indifference in violation of due process in his § 1983 action. According to the court, the detainee submitted no evidence showing an express endorsement of the claimed policies, that any policymaker caused the circumstances of which he complained, or any evidence to establish the existence of a widespread practice by the jail. The court found that jail officers were not deliberately indifferent to the detainee in violation of due process by not taking steps to protect the detainee from attack by gang members. The court held that the detainee's statements to officers prior to the attack, that he was afraid for his life, were not sufficient to alert the officers to a specific threat as he did not provide specific identities of those who had threatened him, did not tell officers he had actually been threatened with future violence, nor that the attack had been inflicted due to his non-gang status. (Cook County Jail, Illinois)
- U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT
PROTECTION FROM
HARM
- Leary v. Livingston County*, 528 F.3d 438 (6th Cir. 2008). A pretrial detainee brought a § 1983 action against a county and officers, alleging deliberate indifference and excessive force. The district court granted summary judgment on qualified immunity grounds to one officer, but denied summary judgment to the other officer. The officers appealed. The appeals court affirmed in part and reversed in part. The court held that the harm facing the detainee resulting from an officer telling other inmates that the detainee was in for raping a nine-year-old girl was objectively serious, as required to establish deliberate indifference and preclude qualified immunity. The

court noted that another officer had verified the risk of serious harm that the detainee would face if the inmates learned of his charges, and the defendant officer himself informed the detainee that “once other inmates found out what he did[,] there would be no protection from anyone here at the jail”. Once other inmates learned of the detainee’s charges, the officer knew there was reason to believe that the detainee would need protection at the jail, and yet the officer persisted in telling other inmates about the detainee’s charges despite that knowledge. (Livingston County Jail, Michigan)

U.S. Appeals Court
MEDICAL CARE
OFFICER ON PRISONER
ASSAULT

Moore ex rel. Estate of Grady v. Tuelja, 546 F.3d 423 (7th Cir. 2008). Administrators of an arrestee’s estate filed a § 1983 action alleging that police officers and jail personnel deprived the arrestee of his rights under the Fourth and Fourteenth Amendments by using excessive force and denying him medical care. The district court entered judgment on a jury verdict in the defendants’ favor and denied the administrators’ motions for judgment as a matter of law and for a new trial. The administrators appealed. The appeals court affirmed. The court held that there was sufficient evidence to support the jury’s findings. A physician had testified that the nature of the arrestee’s injuries indicated that he had most likely been beaten with a baton by jail personnel. But all medical experts agreed that the arrestee suffered from advanced heart disease and died of a heart attack, the arrestee had been in two automobile accidents on the date of his death and had suffered a hand laceration immediately after the second accident, and there was evidence that the arrestee’s wrist injuries occurred in an accident or while he was being transported to jail, and that his head injuries occurred when he fell to the floor after a heart attack. (Chicago Police Department, Illinois)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Ortiz v. Lasker, 590 F.Supp.2d 423 (W.D.N.Y. 2008). A female inmate brought a § 1983 action alleging that a male corrections officer physically and sexually assaulted her. The inmate moved for a default judgment and the district court granted the motion in part. The court held that the inmate was entitled to a default judgment on her claims of unconstitutional denial of liberty, use of excessive force, assault and battery, and sexual assault against the male corrections officer following the officer’s failure to respond to the allegations asserted in the complaint. The inmate alleged that the officer twice cornered her in a locked, isolated classroom, and subjected her to verbal and physical abuse, including but not limited to forcible rape. The court held that the inmate failed to allege intent or disregard of a substantial probability to cause severe emotional distress, as required to state a claim against the male corrections officer for intentional infliction of emotional distress under New York law. (Albion Correctional Facility, New York)

U.S. District Court
SUICIDE

Osterback v. McDonough, 549 F.Supp.2d 1337 (M.D.Fla. 2008). Inmates sued corrections officials, alleging that conditions of close management (CM) status amounted to cruel and unusual punishment. Following the grant of the inmates’ motion to certify the class, and issuance of an order entering the officials’ revised offer of judgment (ROJ), the officials moved to terminate the ROJ pursuant to the Prison Litigation Reform Act (PLRA). The district court granted the motion. The court held that corrections officers were deliberately indifferent in violation of the 8th Amendment when inmates on close management (CM) status who truly were suicidal or otherwise suffered from severe psychological distress declared psychological emergencies. According to the court, the officers failed to summon mental health staff, and inmates thereafter attempted to commit suicide or otherwise harmed themselves, or, in one case, actually committed suicide. But the court found no Eighth Amendment violations with regard to mental health screening procedures, access to mental health care, the level of mental health staff, and instances in which security staff interfered with the delivery of mental health services. (Everglades Correctional Institution, Florida)

U.S. District Court
USE OF FORCE
WRONGFUL DEATH

Parker v. Bladen County, 583 F.Supp.2d 736 (E.D.N.C. 2008). The administratrix of a detainee’s estate brought a § 1983 action in state court against county defendants, alleging that they used excessive force when they used tasers on her. The defendants removed the action to federal court. The county and sheriff’s department moved to dismiss. The district court granted the motion. According to the court, under North Carolina law, the sheriff, not the county encompassing his jurisdiction, has final policymaking authority over hiring, supervising, and discharging personnel in the sheriff’s office. The court found that the sheriff’s deputies’ alleged use of excessive force in attempting to control the detainee by use of tasers, and the sheriff’s department’s alleged failure to train and supervise its employees as to the use of tasers, could not be attributed to the county, so as to subject it to § 1983 liability for the detainee’s death. The court held that the county sheriff’s department lacked the legal capacity, under North Carolina law, to be sued under § 1983 liability for the detainee’s death. (Bladen County Sheriff’s Department, North Carolina)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Parrott v. U.S., 536 F.3d 629 (7th Cir. 2008). A federal inmate brought an action against the Bureau of Prisons (BOP) and several of its employees under the Federal Tort Claims Act (FTCA), alleging the employees negligently handled his personal property and failed to protect him from being attacked by another inmate. The inmate had been stabbed 22 times in the head and arm by another inmate and he was hospitalized for two weeks. The district court granted summary judgment for the government and the inmate appealed. The appeals court affirmed in part, vacated and remanded in part. The court held that the confiscation of the inmate’s property, followed by sending such property to the inmate’s sister, was a “detention” for the purposes of the exception to liability under the Federal Tort Claims Act (FTCA) for claims arising from detention of goods by a law enforcement officer. The court found that summary judgment was precluded by a genuine issue of material fact as to whether a former separation order was in effect between the inmate and another inmate who attacked him. The court noted that if a valid separation order is in effect between inmates, prison staff have no discretion in enforcing such an order, and violation of the order will not be sheltered from liability under the Federal Tort Claims Act (FTCA). (U.S. Penitentiary, Terre Haute, Indiana)

- U.S. District Court
MEDICAL CARE
PRISONER ON PRISONER
ASSAULT
- Petrig v. Folz*, 581 F.Supp.2d 1013 (S.D.Ind. 2008). An inmate filed a § 1983 action in state court alleging that county jail officials failed to protect him from an assault by his cellmate and were deliberately indifferent to his serious medical needs. The case was removed to federal court and the district court granted summary judgment for the sheriff, in part. The court held that the sheriff was not liable under § 1983 in his individual capacity for failing to provide proper medical care after the inmate was assaulted by his cellmate, where the sheriff was not personally involved in any wrongful conduct, and was not personally responsible for the inmate's care after the attack. The court held that summary judgment was precluded by genuine issues of material fact as to whether reasonable jail officials should have realized that the inmate, who was suffering from a lacerated spleen, had an objectively serious medical need, and whether a 21-hour delay in having a physician evaluate and treat the inmate was reasonable. The court found that the county jail's failure to maintain medical staff on-site and available to examine the injured inmate for more than an entire day, and its failure to immediately transport the inmate, who was in obvious distress, to a hospital, were sufficiently indicative of a possible custom, policy, or practice that contributed to the inmate's injury, precluding summary judgment. (Posey County Jail, Indiana)
- U.S. District Court
MEDICAL CARE
WRONGFUL DEATH
- Platcher v. Health Professionals, Ltd.*, 549 F.Supp.2d 1040 (C.D.Ill. 2008). The estate of an inmate brought a civil rights suit against a state department of corrections and private health professionals who worked at an institution's health care center, alleging the inmate died from hypothermia as the result of being stripped, beaten, and placed in a cold cell. The estate moved to enforce a settlement agreement reached with the state defendants. The district court granted the motion to enforce the settlement. The court held that the estate was not required to accept a confidentiality clause that was not discussed in an oral agreement simply because his counsel may have had constructive notice of an alleged state policy to include confidentiality clauses. According to the court, there was no evidence that counsel contemplated inclusion of a confidentiality clause during negotiations. (Menard Correctional Center, Illinois)
- U.S. Appeals Court
MEDICAL CARE
- Popoalii v. Correctional Medical Services*, 512 F.3d 488 (8th Cir. 2008). A state prisoner brought a § 1983 action against multiple staff members of the state department of corrections (DOC) alleging deliberate indifference to her serious medical conditions. The district court struck the prisoner's expert affidavit and granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The court held that DOC staff members were not deliberately indifferent to the prisoner's serious medical condition of cryptococcal meningitis, which resulted in her eventual blindness, as required to prevail in a § 1983 Eighth Amendment claim. According to the court, the prisoner had none of the normal signs or risk factors of cryptococcal meningitis. The court noted that although the staff probably should have been more vigilant in obtaining the prisoner's medical records, which would have disclosed her condition, there was no showing that they knew of the prisoner's condition. (Women's Eastern Reception Diagnostic and Correctional Center, Missouri)
- U.S. District Court
PRISONER SUICIDE
USE OF FORCE
- Powers-Bunce v. District of Columbia*, 576 F.Supp.2d 67 (D.D.C. 2008). The mother of a detainee who committed suicide while in police custody brought a suit in the District of Columbia Superior Court against police officers, alleging violations of the Fifth, Eighth, and Fourteenth Amendments. The case was removed to federal court and the district court granted the officers' motion to dismiss in part and denied in part. The district court granted summary judgment for the officers. An autopsy identified contusions that were consistent with being struck repeatedly with a night stick or similar weapon. The detainee sustained injuries on his buttocks, back of legs, abdomen, back, shins, and fingers. But the court noted that there was no evidence indicating whether the injuries were inflicted before the detainee's arrest or linking the injuries to the arresting officer. The district court concluded that there was an absence of a factual dispute concerning the Fourth Amendment excessive force claim, and therefore summary judgment was granted to the officers. (District of Columbia)
- U.S. District Court
MEDICAL CARE
WRONGFUL DEATH
- Presley v. City of Blackshear*, 650 F.Supp.2d 1307 (S.D.Ga. 2008). A mother brought an action against a city police officer and a county paramedic, arising out of her son's death while detained in a county jail after his arrest. The district court granted the defendants' motion for summary judgment. The court held that the arresting officer was not deliberately indifferent to the serious medical needs of the detainee who died of an apparent drug overdose after being arrested on drug charges and placed into custody at a county jail, absent evidence that the arresting officer actually saw the detainee swallow any drugs that allegedly led to his death. The court held that the county paramedic who responded to the jail was not deliberately indifferent despite any alleged negligence in the paramedic's original diagnosis. The court noted that the paramedic promptly responded to both calls from county jail concerning the detainee, and, each time, examined the detainee to determine whether further medical treatment was needed. According to the court, the paramedic's alleged bad judgment and negligence in caring for the pretrial detainee who died of an apparent drug overdose, was insufficient to show a lack of good faith for the purposes of statutory immunity from negligence or malpractice liability under Georgia law. (City of Blackshear and Pierce County Jail, Georgia)
- U.S. District Court
PRISONER ON PRISONER
ASSAULT
- Price v. District of Columbia*, 545 F.Supp.2d 89 (D.D.C. 2008). An inmate brought a § 1983 action against the District of Columbia, the Director of the Department of Corrections, a former warden, and corrections officers, asserting various claims arising from an incident in which he was stabbed by his cellmate after his repeated requests to be transferred to another cell were not granted. The district court granted the Director and warden's motion to dismiss, finding the claims were duplicative of the claims against the District of Columbia. (District of Columbia Central Detention Facility)
- U.S. Appeals Court
USE OF FORCE
- Richman v. Sheahan*, 512 F.3d 876 (7th Cir. 2008). The administrator of the estate of contemnor filed a § 1983 suit individually and in her official capacity against deputy sheriffs in their individual capacities for violating the Fourth and Eighth Amendments. The administrator alleged that the deputies used excessive force, leading to her son's death, while restraining him for resisting arrest in a state courtroom after a judge held him in contempt. The

district court granted in part and denied in part the deputies' motion for summary judgment on the ground of official immunity and the deputies appealed. The appeals court affirmed in part and reversed in part. The court held that summary judgment was precluded by fact issues as to whether the deputy sheriffs applied excessive force with the intent to punish the contemnor, not merely with the intent to arrest. The court found that the deputies were protected by official immunity for seizing the mother. According to the court, the deputy sheriffs did not subject the mother to excessive force by seizing her in the courtroom. Other deputies restrained her son for resisting arrest allegedly sat on his back. The court noted that the deputies moved the mother by wheelchair to another courtroom in a modest use of force. The court found that the use of force was well suited to the situation in which it was essential to remove her after she had tried to force her way back to the courtroom, as her screaming would have likely distracted the deputies or incited the son to further struggles. The court noted that she did not suffer the slightest injury from the short trip in the wheelchair. (Cook County, Illinois)

U.S. Appeals Court
RELEASE

Sandage v. Board of Com'rs of Vanderburgh County, 548 F.3d 595 (7th Cir. 2008). The family of murder victims brought a civil rights action under § 1983 against county officials, alleging that a county sheriff's department's failure to act on the victims' complaint deprived the victims of their lives without due process of law, in violation of the Fourteenth Amendment. The victims had complained that they were being harassed by a murderer who was a county jail inmate and they asked county officials to revoke the inmate's work-release privilege and re-imprison him. The inmate ultimately murdered the victims while he was on work release. The inmate had been serving a four-year sentence for robbery. The district court dismissed the complaint, and the plaintiffs appealed. The appeals court affirmed, finding that the sheriff's department's failure to act on the victims' complaint did not deprive the victims of due process. The court noted that the county officials had no duty to protect the victims against private violence, and the officials' failure to revoke the inmate's work release did not create the danger that the inmate posed to the victims. (Vanderburgh County Jail, Indiana)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT

Simpson v. Thomas, 528 F.3d 685 (9th Cir. 2008). A state inmate brought a § 1983 action against a corrections officer, alleging use of excessive force after the inmate failed to comply with the officer's orders. A jury trial resulted in a verdict in the officer's favor, and the district court denied the inmate's motion for a new trial. The inmate appealed. The appeals court reversed and remanded. The court held that the inmate was not precluded from testifying that the officer started the physical altercation by punching him, and that his subsequent actions were done in self-defense, even if such testimony was contrary to the result of a prison disciplinary proceeding in which the inmate was found guilty of battery on the officer and assessed 150 days of behavioral credit forfeiture. (California Medical Facility, Vacaville)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Smith v. County of Los Angeles, 535 F.Supp.2d 1033 (C.D.Cal. 2008). The estate of a deceased county jail inmate brought a § 1983 action against a county and officials, claiming violation of the inmate's Fourth, Fifth, Eighth and Fourteenth Amendment rights, arising out of denial of the inmate's request for an asthma inhalator. The district court denied the defendants' motion to dismiss. The court held that the Eleventh Amendment immunity of state officials did not apply to the county sheriff. The court found that the estate stated a claim that the county was liable when the inmate died allegedly because he was denied an asthma inhalator. The court held that the allegation that the county "promulgated, created, maintained, ratified, condoned, and enforced a series of policies, procedures, customs and practices which authorized the arbitrary punishment and infliction of pain, torture, and physical abuse of certain inmates and detainees" was sufficient to state a claim. The court found that the estate stated a claim that officials violated the Eighth Amendment by showing deliberate indifference to his medical condition, through allegations that they ignored the inmate's plea to be furnished with his asthma inhalator. (Los Angeles County Men's Central Jail, California)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

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. Appeals Court
SEXUAL ASSAULT

Tafoya v. Salazar, 516 F.3d 912 (10th Cir. 2008). A female inmate who was sexually assaulted by a detention officer brought an action against an officer and a sheriff under § 1983 and state law. The district court granted summary judgment to the sheriff and the inmate appealed. The appeals court affirmed in part, reversed in part and remanded. The court held that summary judgment was precluded by an issue of material fact as to whether the sheriff was deliberately indifferent to a substantial risk of serious harm to inmates that continued to exist at the jail, notwithstanding the measures he had implemented to remedy the circumstances in the jail that had directly led to sexual assaults of inmates by detention officers. Prior to this case, two independent incidents of sexual assault occurred in the jail, both perpetrated by male detention officers against female inmates. The appeals court had previously found evidence that these assaults were the product of unconstitutional jail conditions maintained through the deliberate indifference of the sheriff. The court noted many ways in which his administration of the jail fell below an acceptable standard. Three years after these assaults the plaintiff in this case was sexually assaulted by a detention officer who was later arrested for and convicted of the assaults. (Huerfano County Jail, Colorado)

U.S. District Court
SUICIDE

Tatsch-Corbin v. Feathers, 561 F.Supp.2d 538 (W.D.Pa. 2008). Survivors of an inmate who committed suicide sued a jail's forensic specialist under § 1983, claiming violations of the Fourteenth Amendment's prohibition against deprivations of life without due process. The district court denied the forensic specialist's motion to dismiss. The court found that the fact that the jail's forensic specialist lacked a contractual relationship with either the jail or a health care contractor retained by the county did not preclude her from being considered a "state actor," as required for imposition of liability under § 1983 in connection with the inmate's suicide. According to the court, her role was to provide mental health care to inmates, regardless of her other job responsibilities or the contractual nuances through which she came to work at the jail, and she could not have done so without the authorization of the state. The court found that the inmate's survivors alleged sufficient facts to establish that the forensic specialist should have known, or did know, that the inmate presented a suicide risk and failed to take necessary or available precautions to protect him. According to the court, alleged facts suggested that the inmate had made various threats to kill himself, which had been taken seriously enough by jail officials to warrant the request of an evaluation by a mental health professional, and he had a documented history of attempted suicide and psychiatric hospitalization, of which the specialist was allegedly aware. (Blair County Prison, Pennsylvania)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT

U.S. v. Conatser, 514 F.3d 508 (6th Cir. 2008). Jail officers were convicted in district court on charges arising from their participation as corrections officers in a conspiracy to violate the rights of detainees and prisoners in a county jail. The officers appealed and the appeals court affirmed. The court held that evidence was sufficient to support the determination that one officer joined a conspiracy. Three conspirators testified that the officer was among those second-shift officers who would accompany a second-shift supervisor into a cell or stand outside the cell while the supervisor committed unjustified assaults on loud, obnoxious or uncooperative inmates. According to the court, evidence indicated that the officer, on a specific occasion involving the death of an inmate, followed the supervisor and a coconspirator as they took the inmate to a detox cell, and the officer stood outside while the inmate was assaulted. The court found that a sentence of life imposed upon a supervising corrections officer was reasonable, even though another officer had inflicted the injuries that ultimately killed an inmate, given that the supervising officer's actions in denying the inmate necessary and appropriate medical care resulted in his death. (Wilson County Jail, Tennessee)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT

U.S. v. Cote, 544 F.3d 88 (2nd Cir. 2008). After a correction officer was convicted by a jury of criminal violation of a pretrial detainee's civil rights, the district court granted the officer's motion for judgment of acquittal notwithstanding the verdict and conditionally granted the officer's motion for a new trial. The government appealed, and the officer cross-appealed. The appeals court reversed and remanded, finding that there was sufficient evidence to support the officer's conviction. The court held that the officer was not entitled to a new trial. According to the court, evidence was sufficient to support the correction officer's conviction for the criminal violation of the pretrial detainee's right to be free from excessive force, despite discrepancies in inmate witnesses' accounts as to the number of stomps and kicks the defendant gave the detainee, and the possibility that the detainee suffered a head injury when he was taken down by another officer. The court noted that four eyewitnesses testified that the defendant viciously assaulted the detainee while he was lying on the ground, already in a position of weakness, and that the defendant yelled words of punishment at the detainee. A fellow officer testified that the defendant falsified his incident report and attempted to persuade him to "[stick] to the story." The government's medical expert testified that it was unlikely the detainee's injuries were caused by a single blow. All witnesses agreed that the defendant approached and began assaulting the detainee while he was being held down by another officer, and that the defendant was shouting at the detainee to respect his authority. (Westchester County Jail, New York)

U.S. District Court
OFFICER ON PRISONER
ASSAULT

U.S. v. Gould, 563 F.Supp.2d 1224 (D.N.M. 2008). A correctional officer was charged with violating the civil rights of an inmate in a beating incident. Following a jury trial, the officer was convicted of various counts, including deprivation of rights under the color of law and obstructing justice by writing false reports. The officer moved for a new trial on those counts, alleging that the government had violated its obligations by not disclosing the inmate's psychiatric evaluations. The court denied the motion, finding that the evaluations were not favorable to the defendant and the evaluations were not material to the outcome of the trial. (Dona Ana County Detention Center, New Mexico)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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

U.S. Appeals Court
SUICIDE

Whitt v. Stephens County, 529 F.3d 278 (5th Cir. 2008). The father of a pretrial detainee who purportedly hanged himself while incarcerated at a county jail brought a § 1983 action against a county, the county sheriff, and unknown jail officials. The district court granted summary judgment in part in favor of jail officials and the sheriff in their individual capacities. The father appealed. The appeals court affirmed. The district court denied the father's motion for leave to amend the complaint to identify the unknown jail officials, and granted summary judgment in favor of the defendants on remaining claims. The father again appealed. The appeals court affirmed. The court held that the amended complaint to substitute named county jail officials for unknown jail officials did

not relate back to the original complaint, for the purpose of avoiding a statute of limitations bar. The court found that the county sheriff was not liable under § 1983 for the death of the pretrial detainee, where the sheriff was not present at the jail until after the detainee was found dead, and there was no showing that the sheriff played any part in the detainee's death, or that the sheriff was deliberately indifferent in failing to attempt to resuscitate the detainee or obtain additional medical care for the detainee. The court held that the county was not liable under § 1983 for the detainee's purported suicide, where the county had adequate policies and procedures for detainees who posed an obvious risk of suicide, the detainee did not indicate that he was suicidal on an intake form or otherwise exhibit obvious suicidal tendencies, and the county was not deliberately indifferent in failing to train or supervise county jail officials. The court noted that in the specific context of jail suicide prevention, municipalities must provide custodial officials with minimal training to detect the obvious medical needs of pretrial detainees with known, demonstrable, and serious medical disorders, but a failure to train custodial officials in screening procedures to detect latent suicidal tendencies does not rise to the level of a constitutional violation. The court found that in the absence of manifest signs of suicidal tendencies, a city may not be held liable for a pretrial detainee's jailhouse suicide in a § 1983 suit based on a failure to train. (Stephens County Jail, Texas)

U.S. District Court
TRANSPORTATION

Zabala-Calderon v. U.S., 616 F.Supp.2d 195 (D.Puerto Rico 2008). A female detainee filed suit, under the Federal Tort Claims Act (FTCA), seeking injunctive relief and damages from the United States for injuries she allegedly suffered from falling to the ground when exiting the bus managed by the United States Marshal Service (USMS) during her transport from a detention center to a federal courthouse while she was fully restrained with handcuffs, a belly chain, and shackles. The district court denied the government's motion for summary judgment, finding that fact issues precluded summary judgment as to whether the detainee's injuries were caused by the government's negligence. The court found genuine issues of material fact remained as to whether the government failed to follow a standard of care and skill in transporting the female detainee by placing shackles on her that were allegedly too short for her to step down from a bus managed by the United States Marshal Service (USMS) and by allegedly failing to assist her as she stepped down from bus, resulting in the detainee's falling to the ground and sustaining injuries. (Metropolitan Detention Center, Puerto Rico)

2009

U.S. District Court
PRISONER ON PRISONER
ASSAULT
THREATS

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. Appeals Court
OFFICER ON PRISONER
ASSAULT

Adkins v. Wolever, 554 F.3d 650 (6th Cir. 2009). A prisoner brought a § 1983 action against a prison guard, alleging that the guard assaulted him in violation of his Eighth Amendment rights. The district court denied the prisoner's motion for a jury instruction related to the alleged spoliation of film and photographic evidence of the alleged assault. The prisoner had asked the court to sanction the defendant for failing to produce stationary video footage that shows the prisoner being escorted back to his cell, a post-incident narrative video that contains interviews of staff members about the incident, and original photographs of the prisoner's injuries. The prisoner appealed. The appeals court remanded the action to determine whether the guard should be subject to any form of spoliation sanctions. (Ionia Maximum Security Facility, Michigan)

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. District Court
OFFICER ON PRISONER
ASSAULT
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. (Berrien County Jail, Georgia)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Brace v. Massachusetts, 673 F.Supp.2d 36 (D.Mass. 2009). The administrator of a female detainee's estate sued the Commonwealth of Massachusetts and a number of individuals having some role in providing medical services to inmates at a county correctional facility, including a clinician, asserting claims for negligence and medical malpractice, and alleging that the detainee was deprived of her constitutional rights by deliberate indifference to her medical needs. A clinician moved to dismiss certain counts. The district court allowed the motion in part and denied in part. The court held that dismissal of a medical malpractice claim after a medical tribunal found that there was insufficient evidence to raise a legitimate question of liability did not preclude the deceased detainee's estate from stating a § 1983 claim against a prison clinician for deliberate indifference to the inmate's medical needs. The court held that the deceased detainee's estate stated a § 1983 wrongful death claim against the jail clinician for deliberate indifference to the inmate's medical needs, in violation of her Eighth and Fourteenth Amendment rights. The estate alleged that the clinician observed the detainee while she was in obvious medical distress and took the minimal step of making a phone call to a medical unit about the detainee's condition. (Hampden County House of Correction, Massachusetts)

U.S. District Court
THREATS

Brown v. Corsini, 657 F.Supp.2d 296 (D.Mass. 2009). Inmates brought a pro se § 1983 action against prison officials, alleging retaliatory transfer, deliberate indifference and due process violations. The district court granted the officials' motion for summary judgment. The court held that the inmates failed to demonstrate that they would not have been transferred to a new prison but for the prison officials' retaliatory motive, for filing grievances about being required to install security screens on other prisoners' windows. The court noted that the inmates had refused to perform work assignments in the prison's maintenance shop in violation of prison regulations. According to the court, prison officials were not deliberately indifferent to the inmates' safety in violation of the Eighth Amendment by refusing to reassign them to new jobs despite their fear of retribution by other prisoners. The prisoners had installed security screens on other prisoners' windows as part of their job duties. The court noted that there was no evidence that the inmates were subjected to ominous threats or violence by other prisoners. (Bay State Correctional Center, Massachusetts)

U.S. District Court
DELIBERATE
INDIFFERENCE
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

Browning v. Pennerton, 633 F.Supp.2d 415 (E.D.Ky. 2009). A pro se federal prisoner brought an action against prison officials, alleging that the officials violated the Eighth Amendment by deliberately failing to heed his warning that another inmate was going to harm him and for providing inadequate medical treatment after the inmate attacked him. The court held that the prisoner failed to allege that he personally warned prison supervisors of threats made by another inmate and his resulting fear for his safety, as required to state an Eighth Amendment failure to protect claim against the supervisors. The court found that prison supervisors were not physicians qualified to render medical treatment and lacked involvement in treating the prisoner's injuries, and thus the supervisors could not be held liable for failing to provide adequate medical treatment to the prisoner following an assault by another inmate. The court found that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner, who had warned prison officers that he faced imminent danger from another inmate, was incarcerated under conditions that posed a substantial risk of serious harm, and whether the officers were deliberately indifferent to that substantial risk. (U. S. Penitentiary, Big Sandy, Kentucky)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Burke v. North Dakota Dept. of Correction and Rehabilitation, 620 F.Supp.2d 1035 (D.N.D. 2009). A state inmate filed a § 1983 action against prison officials alleging statutory and constitutional violations, including interference with his free exercise of religion, lack of adequate medical care, retaliation for exercising his constitutional rights, failure to protect, refusal to accommodate his disability, and cruel and unusual punishment. The district court granted summary judgment for the defendants. The court held that: (1) failure to provide Hindu worship services on Thursdays did not violate the inmate's equal protection rights; (2) the decision to reduce Hindu worship services at the facility did not violate the Free Exercise Clause; (3) restriction of the Hindu inmate's use of camphor, kumkum, incense, and a butter lamp during worship services did not violate the Free Exercise Clause; and (4) failure to find a qualified Hindu representative to assist the inmate in the study of his religion did not violate the Free Exercise Clause. The court held that prison officials did not violate the inmate's Eighth Amendment rights when they housed an easily-provoked prisoner in the cell next to his cell, despite the inmate's contention that officials placed him there in retaliation for his civil action against them. The inmate admitted that he never had any problems with the prisoner prior to their altercation, and the inmate acknowledged that he provoked the altercation. The court held that an officer's filing of a disciplinary charge against the inmate, after the inmate filed a grievance with the warden alleging that the officer had failed to break up an altercation involving the inmate, was not retaliatory in violation of the inmate's First Amendment rights,

where prison officials investigated the altercation, the inmate admitted that he provoked the altercation, and the inmate was found guilty of a disciplinary violation. (North Dakota State Penitentiary)

U.S. District Court
SUICIDE ATTEMPT

Cabral v. County of Glenn, 624 F.Supp.2d 1184 (E.D.Cal. 2009). A pretrial detainee brought a § 1983 action against a city and a police officer alleging violations of the Fourth and Fourteenth Amendments and claims under California law. The city and officer filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee, a psychotic and suicidal individual who collided with the wall of a safety cell and broke his neck, failed to plead that a police officer, who extracted the detainee from his holding cell and used a stun gun and pepper spray on him following an incident in which the detainee rubbed water from his toilet on his body, was deliberately indifferent to the detainee's need for medical attention, as required to state due process claim under § 1983. According to the court, the detainee failed to allege that the officer knew he was suicidal and was not receiving medical care, or that the officer attempted to interfere with the detainee's receipt of such medical attention. The court found that the detainee's allegations that the officer used a stun gun, a stun-type shield and pepper spray in an attempted cell extraction while the detainee was naked, unarmed and hiding behind his toilet were sufficient to state an excessive force claim under § 1983. The court denied qualified immunity for the officer, even though the detainee had not responded to the officers' commands to come out of his cell. The court noted that the law clearly established that police officers could not use a stun gun on a detainee who did not pose a threat and who merely failed to comply with commands. The court held that the detainee sufficiently pleaded that the city had a policy of using stun guns in such situations, as required to state a § 1983 Fourth Amendment excessive force claim against the city. The detainee alleged that nine months prior to his assault, a separate incident occurred that was similar. (City of Willows Police Department, California)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Chao v. Ballista, 630 F.Supp.2d 170 (D.Mass. 2009). A former state prisoner brought a § 1983 action against officials at the Massachusetts Department of Correction (DOC), alleging that the officials failed to properly investigate and protect her from sexual abuse by a prison guard. The officials moved to dismiss the complaint on a number of grounds. The district court held that the former prisoner was not subject to the Prison Litigation Reform Act's (PLRA) exhaustion requirement. The court found that the former prisoner's allegations in her amended complaint that, over the course of a year, she and the prison guard engaged in 50 to 100 sexual encounters in a prison facility without detection, that the guard had a sexual relationship with at least one other female inmate, that sexual encounters continued even after the guard was reassigned to different duties, and that a prison nurse placed the prisoner on oral contraceptive pills during the relevant time period, sufficiently stated a § 1983 claim against prison officials. The district court held that DOC officials were not entitled to qualified immunity, given the extent of the abuse, the numerous warning signs alleged, and the available sources of information. (South Middlesex Correctional Center, Massachusetts)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Clem v. Lomeli, 566 F.3d 1177 (9th Cir. 2009). A state inmate brought a § 1983 action against a prison officer, alleging his Eighth Amendment rights were violated when the officer failed to alleviate a substantial risk posed by his drunk, threatening cellmate. The district court entered judgment following a jury verdict in favor of the officer and the inmate appealed. The appeals court reversed and remanded. The appeals court held that the inmate was entitled to a "failure to act" jury instruction, where evidence showed that the officer heard the inmate's call for help immediately prior to his beating by his cellmate and that the officer took no steps to abate any risk to the inmate. The court also found that the district court's jury instruction error in the inmate's § 1983 action was not harmless, where the instruction added an extra element to the inmate's burden of proof by requiring the jury to find that some act of the officer was the moving force that directly caused the ultimate injury. The court noted that the entire verdict consisted of a response of "no" to the question of whether the officer was deliberately indifferent to a serious risk of harm by failing to remove the inmate from his cell, and the court never explained to the jury what "deliberately indifferent" meant. (Mule Creek State Prison, California)

U.S. District Court
SUICIDE
SUPERVISION

Cuebas v. Davila, 618 F.Supp.2d 124 (D.Puerto Rico 2009). The mother of a man who committed suicide in a jail cell filed a § 1983 action on behalf of herself, her minor daughter, and her deceased son, claiming deprivation of constitutional rights by the arresting police officers and their supervisors, and seeking compensatory damages for pain and suffering due to the loss of her mentally ill son. The district court dismissed the case in part, and declined to dismiss in part. The court held that the mother, as sole heir of her deceased son, under Puerto Rico law, had Article III standing to bring a § 1983 suit on behalf of her son against the police officers and supervisors for alleged constitutional violations, since the mother inherited her son's cause of action. The court found that the mother's allegations that arresting officers and their superiors were deliberately indifferent to her son's risk of suicide in his jail cell following his arrest were sufficient to state a § 1983 claim that the son's due process rights were violated under the Fourteenth Amendment. The court held that the mother's allegations that the police officer in charge of detainees was deliberately indifferent to her son's risk of suicide were factually sufficient to state a § 1983 claim that the officer violated her son's due process rights, including allegations that the officer was aware of the likelihood that the arrestee might commit suicide, and that the officer did not take obvious steps to prevent the arrestee's suicide. The mother had explained to the officers that her son was mentally ill and that he had recently attempted suicide. The son was placed in a cell after his shoes and belt had been removed. At some point during that night he committed suicide. The mother alleged that he was not properly monitored while being held in custody, as he should have been, by the officers who were aware he was suicidal. She alleged that his cell was not adequately monitored even though the police officers who arrested him and who monitored him knew that he was mentally ill and had recently attempted suicide. (Puerto Rico Police Department, Salinas Police Headquarters)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Cusamano v. Sobek, 604 F.Supp.2d 416 (N.D.N.Y. 2009). A former state prisoner brought a pro se action against department of corrections employees, alleging violation of his First, Eighth and Fourteenth Amendment rights as well as the New York Constitution. The district court granted summary judgment for the defendants in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact regarding whether a corrections officer was present during, and participated in, the alleged assault of the prisoner. The court noted that an officer's failure to intervene during another officer's use of excessive force can itself constitute excessive force. The court also held that summary judgment was precluded by a genuine issue of material fact regarding whether excessive force was used against the prisoner. The court found that there was no meeting of the minds between corrections officers to inflict an unconstitutional injury on the prisoner, as required for the prisoner's conspiracy claim against the officers. According to the court, there was no evidence of an agreement to inflict an injury on the prisoner, or of an overt act done in furtherance of that goal. The court found that there was no evidence that a misbehavior report that a corrections officer filed against the prisoner was a false report intended to cover up the use of excessive force, as required for the prisoner's false misbehavior report claim against the officer. The court also found no causal connection between the state prisoner's grievance and the issuance of the misbehavior report, as required for the state prisoner's retaliation claim against a corrections officer. The court found that the actions of the corrections officers toward the prisoner, including the utterance of profanities and the deprivation of amenities, did not cause the prisoner physical injury or psychological injury that was more than de minimis, as required for the prisoner's harassment claim against the corrections officers under the Eighth Amendment. (Gouverneur Correctional Facility, Clinton Correctional Facility, New York)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
THREATS

Davis v. Muscarella, 615 F.Supp.2d 296 (D.Del. 2009). An inmate whose jaw was broken in a fight brought an action under § 1983 against a prison mental health counselor, alleging failure to protect in violation of the Eighth Amendment. The district court granted summary judgment in favor of the counselor, finding that the mental health counselor did not have knowledge that the inmate was at a substantial risk of harm. The court noted that even though the inmate told the counselor that a fellow inmate had incorrectly identified him as a child molester to other inmates, that he had been struck in the face because of his alleged sex offender status, and that he was twice pushed in the face while playing basketball, the inmate never indicated that a fellow inmate had made a specific threat to injure him. The inmate had a history of altercations with other inmates and had indicated to the counselor that he was able to protect himself, and the inmate never requested a transfer for protection. (James T. Vaughn Correctional Center/Delaware Correctional Center)

U.S. District Court
SUICIDE

Edwards v. District of Columbia, 616 F.Supp.2d 112 (D.D.C. 2009). The representative of the estate of a woman who committed suicide while being held in a District of Columbia jail brought an action against the District and the jail's medical services contractor in the Superior Court for the District of Columbia, alleging negligence in the provision of mental health care in ensuring that the woman was not a danger to herself. The representative also alleged that the District and contractor failed to adequately provide a medical response upon discovering the woman in the immediate moments after her suicide. The contractor removed the case to federal district court and moved to dismiss. The district court held that the representative was required to exhaust administrative remedies under the Federal Tort Claims Act (FTCA) on claims against the contractor before bringing an action under FTCA and that the court lacked subject matter jurisdiction over the FTCA claims and claims against the District. (District of Columbia Jail)

U.S. Appeals Court
SUICIDE

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
STAFFING
WRONGFUL DEATH

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

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Estate of Henson v. Wichita County, Tex., 652 F.Supp.2d 730 (N.D.Tex. 2009). Daughters of a pre-trial detainee, who died from chronic obstructive pulmonary disease while being held in a county jail, brought a § 1983 action against the county and jail physician, among others, for violation of the detainee's Fourth and Fourteenth Amendment rights. The court held that summary judgment was precluded by genuine issues of material fact as to whether the jail physician was a supervisor, whether a policy of intimidation of jail nurses was a moving force behind the alleged violation of the rights of the detainee, whether the physician failed to supervise nurses, and, if so, whether his failure to supervise amounted to deliberate indifference. (Wichita County Jail, Texas)

U.S. District Court
MEDICAL CARE

Fleming v. Sharma, 605 F.Supp.2d 399 (N.D.N.Y. 2009). The wife of a deceased prisoner, individually and as administratrix of the prisoner's estate, brought an action under § 1983 against a prison physician and a medical director, alleging that the defendants were deliberately indifferent to the prisoner's serious medical needs in violation of his Eighth Amendment rights, and seeking loss of consortium as a result of the prisoner's death. The district court granted summary judgment for the defendants in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prison physician and medical director were deliberately indifferent to the serious medical needs of the prisoner, who suffered from congestive heart failure, and who died while under the defendants' care. The defendants allegedly failed to provide the prisoner with medication to stabilize his heart condition, despite the recommendations of four different physicians that the prisoner be treated with the medication. According to the court, the prison physician and the medical director were not entitled to qualified immunity from the § 1983 claim brought by the wife where the very nature of the action called into question the reasonableness of the defendants' decision not to administer medication. The court found that the loss of consortium claim brought by the wife was not cognizable pursuant to § 1983 where the claim was not based upon the deprivation of the wife's constitutional rights, but, rather, was a state law claim for the loss of her husband's love, support, and services. (Mohawk Correctional Facility, New York)

U.S. District Court
PRISONER SUICIDE
SUPERVISION
WRONGFUL DEATH

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
OFFICER ON PRISONER
ASSAULT

Gregg v. Ohio Dept. of Youth Services, 661 F.Supp.2d 842 (S.D. Ohio 2009). The resident of a juvenile correctional facility brought a § 1983 action against facility officials, seeking damages for injuries he allegedly received at the hands of corrections officers. The court held that summary judgment was precluded by a fact question as to whether correctional officers used excessive force in subduing the resident when he stepped out of the line to receive his medication. The court also found a fact question as to whether correctional officers who observed the alleged beating of the resident by other officers violated the resident's constitutional rights by failing to intervene in the beating. (Ohio River Valley Juvenile Correctional Facility, Ohio)

U.S. District Court
SEXUAL ASSAULT

Hall v. Terrell, 648 F.Supp.2d 1229 (D.Colo. 2009). A female detainee brought a § 1983 action against a correctional officer, alleging that he raped her while she was in custody. Following entry of default judgment against the officer, a bench trial to determine damages, and the entry of a judgment awarding compensatory and punitive damages, the detainee moved for prejudgment interest and attorney fees. The district court granted the motion for attorney fees in part. The court held that the Prison Litigation Reform Act (PLRA) applied to the detainee's request for attorney fees where the detainee was, at every stage of the lawsuit, a prisoner confined to a correctional facility, she was the prevailing party in her suit, and the suit was an action in which attorney fees were authorized under § 1988. The court held that the reasonable hourly rate for the lodestar amount, in determining the award of attorney fees under PLRA, was the hourly rate for Criminal Justice Act (CJA) appointments in Tenth Circuit and District of Colorado. According to the court, under PLRA, the appropriate hourly rate for the award of paralegal fees was 64% of the average rate that she had requested for non-senior attorneys, and for an assistant was 50% of such rate. The court held that under PLRA, 10 percent was the appropriate percentage of the judgment obtained by the detainee against the corrections officer, where the factor of the opposing party's culpability or bad faith favored the detainee, the factor of ability to satisfy the award of attorney fees suggested that the detainee should bear some portion of attorney fees, and the factor of the

possibility that the award might deter other persons favored the detainee. The district court had awarded \$1,354,070 in damages, comprised of \$354,070.41 in compensatory damages and \$1 million in punitive damages. (Denver Women's Correctional Facility, Colorado)

U.S. District Court
FAILURE TO PROTECT
PRISONER ON PRISONER
ASSAULT
STAFFING

Hardy v. District of Columbia, 601 F.Supp.2d 182 (D.D.C. 2009). Pretrial detainees, allegedly assaulted by fellow inmates, brought a suit against the former Director of the District of Columbia Department of Corrections and a former jail warden in both their official and individual capacities, and against the District of Columbia. The detainees sought damages under § 1983 for alleged Fifth and Eighth Amendment violations. The district court dismissed the case in part. The court held that the detainees' § 1983 official capacity claims against the former Director and former jail warden were redundant to the claims against the District of Columbia, warranting dismissal. The court noted that claims brought against government employees in their official capacity are treated as claims against the employing government and serve no independent purpose when the government is also sued. The detainees alleged that before the scalding attacks that injured them, one of the very assailants had committed a similar scalding attack using water heated in an unguarded microwave, and that the locations where their assaults occurred were inadequately staffed with corrections officers and resulted in the assaults taking place without any officers in the vicinity. The court held that these allegations were sufficient to plead conditions of detention that posed a substantial risk of serious harm, as required to state a failure-to-protect claim against the Director of the District of Columbia Department of Corrections and the jail warden. The detainees alleged that on the day of one of their scalding assaults by a fellow inmate, officials were present at a council hearing at which testimony described significant and multiple instances of violence in unguarded locations occurring in the jail, that the previous scalding assaults had occurred by the same inmate in question, and that despite such knowledge, the officials refused to take measures to protect inmates. The court found that the detainees' allegation that the Director and jail warden were deliberately indifferent to negligent supervision of correctional officers and lack of staff training, was sufficient to state a § 1983 failure to train claim violative of their due process rights. The detainees alleged that the warden and Director were at the top of the "chain of command" at the jail, that they had been aware of violence issues for many years, and that they had been instructed to take action against violence on numerous occasions. The district court denied qualified immunity for the Director and jail warden, noting that the detainees' due process rights against deliberate indifference were clearly established at the time of violent scalding attacks by fellow inmates. (District of Columbia Jail)

U.S. District Court
TRANSPORTATION
WRONGFUL DEATH

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
MEDICAL CARE

Jennings v. Hart, 602 F.Supp.2d 754 (W.D.Va. 2009). The administrator of an inmate's estate brought an action against a sheriff and several other current or former officers in a county sheriff's department, alleging claims under § 1983 and a state wrongful death act for one officer's alleged wrongful denial of medical care to an inmate in the county jail. The district court denied the officers' motion to dismiss on the grounds of sovereign immunity. The district court held that the officers lacked the discretion to keep the inmate at the jail and deny her the opportunity to be seen by a neurologist or other medical professional for ten days following referral by a nurse practitioner. The officers allegedly ignored the inmate's repeated requests for help and worsening physical condition, including severe headaches, dizziness, pressure in her head, loss of appetite, and fluid drainage in her ears. By the time the officers contacted outside medical professionals, the inmate was suffering from brain abscesses and a stroke which led to her death. (Culpeper County Jail, Virginia)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Johnson v. Boyd, 676 F.Supp.2d 800 (E.D. Ark. 2009). A state prisoner filed a civil rights action against a detention center and its personnel alleging several violations. The defendants moved for summary judgment and the district court granted the motion in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether detention center personnel failed to protect the prisoner from an attack by another prisoner. According to the court, the prisoner's First Amendment freedom of association and speech rights had not been violated by denial of his visitation, phone, and mailing privileges for two days as the direct result of the prisoner committing a disciplinary infraction while he was in protective custody. (Crittenden County Detention Center, Arkansas)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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. Appeals Court OFFICER ON PRISONER ASSAULT SEXUAL ASSAULT	<p><i>Kahle v. Leonard</i>, 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)</p>
U.S. Appeals Court USE OF FORCE WRONGFUL DEATH	<p><i>Lewis v. City of West Palm Beach, Fla.</i>, 561 F.3d 1288 (11th Cir. 2009). The survivor of a detainee who had died in police custody brought a § 1983 action against a city and against individual officers, alleging use of excessive force. The district court granted summary judgment for the defendants and the survivor appealed. The appeals court affirmed. The court held that the detainee's right not to be restrained via "hobbling" and being "hogtied" was not clearly established. The detainee became unconscious and died during detention. According to the court, the officers' conduct was not so egregious as to be plainly unlawful to any reasonable officer, given the detainee's agitated state when first detained and given his continued uncooperative and agitated state, presenting a safety risk to himself and others, during restraint. After handcuffing the detainee did not prevent his continued violent behavior, the officers attached an ankle restraint to the handcuffs with a hobble cord (also known as "TARP," the total appendage restraint position). The hobble was tightened so that Lewis's hands and feet were close together behind his back in a "hogtied" position. The court held that the city was not potentially liable for failure to train officers in the use of restraints, where the need for training in the application of "hobble" restraints did not rise to the level of obviousness that would render the city potentially liable under § 1983 for deliberate indifference based on the failure to administer such training. The court noted that hobble restraints did not have the same potential flagrant risk of constitutional violations as the use of deadly firearms. (West Palm Beach Police Department, Florida)</p>
U.S. Appeals Court MEDICAL CARE	<p><i>Mann v. Taser Intern., Inc.</i>, 588 F.3d 1291 (11th Cir. 2009). The administrators of an estate, the husband, and guardians of the children of an arrestee who died following her arrest by sheriff's deputies and her admission to a county jail, brought an action under § 1983 and state law against the deputies and the manufacturer and distributor of the stun gun used by deputies during the arrest. The district court granted summary judgment to the defendants and the plaintiffs appealed. The appeals court affirmed. The appeals court held that the use of the stun gun constituted reasonable force where the arrestee's behavior was violent, aggressive and prolonged, demonstrating that she was clearly a danger to herself and others, and the deputy warned the arrestee to stop her behavior and discharged his stun gun only after she refused to comply with the his orders. According to the court, the plaintiffs failed to establish that the arrestee's death was caused by the use of a stun gun. The court noted that the plaintiffs' own medical expert testified that, while it would have been naive of him to say that the use of the stun gun did not contribute in some degree to the arrestee's death, he was unable to declare to a reasonable degree of medical certainty that the arrestee would have survived but for its use. The court held that the sheriff's deputies were not deliberately indifferent to the arrestee's serious medical condition of "excited delirium" when they opted to take her to jail instead of to a hospital. Although one deputy had knowledge of the arrestee's past methamphetamine use, and the arrestee's mother and another person told a different deputy that the arrestee was sick and needed to go to the hospital, the deputies had no prior knowledge of the medical condition called "excited delirium" or its accompanying risk of death. The court noted that the arrestee's physical resistance and verbal communication suggested to the deputies that, although agitated, the arrestee was not in immediate medical danger, which was an opinion shared by emergency medical personnel who were called to the scene by the deputies. (Whitfield County Sheriff's Office, Georgia)</p>
U.S. Appeals Court PLRA-Prison Litigation Reform Act PRISONER ON PRISONER ASSAULT	<p><i>Marella v. Terhune</i>, 568 F.3d 1024 (9th Cir. 2009). A state prisoner brought a § 1983 action against prison officials under the Prison Litigation Reform Act (PLRA), alleging violations of his constitutional rights stemming from a knife attack by his fellow inmates. The district court dismissed the action for failure to exhaust administrative remedies and the prisoner appealed. The appeals court reversed and remanded. The court held that the California state prisoner was not required to exhaust his administrative remedies beyond the second level of the prison appeals system in order to bring a § 1983 action under the Prison Litigation Reform Act (PLRA), where, after filing his first level appeal, the prisoner had been informed that the appeals process was unavailable to him. (Calipatria State Prison Facility "B", California)</p>
U.S. Appeals Court MEDICAL CARE	<p><i>Martinez v. Beggs</i>, 563 F.3d 1082 (10th Cir. 2009). A pretrial detainee's estate brought a § 1983 action against a sheriff, deputies, and board of county commissioners alleging violations of the Fourteenth Amendment for deliberate indifference to the detainee's serious medical needs after the detainee died while in police custody. The district court granted summary judgment in favor of the defendants on qualified immunity grounds. The plaintiff appealed. The appeals court affirmed. The court held that the arresting officers and custodial officers had no reason to suspect that the detainee, who was intoxicated, posed a risk of heart attack and death, as required to support a claim that the officers violated the Fourteenth Amendment by being deliberately indifferent to the detainee's serious medical needs. (Cleveland County Detention Center, Oklahoma)</p>
U.S. Appeals Court PRISONER ON PRISONER ASSAULT WRONGFUL DEATH	<p><i>Mosher v. Nelson</i>, 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</p>

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
PRISONER ON PRISONER
ASSAULT
WRONGFUL DEATH

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.

The father was arrested for having no proof of auto insurance and was placed in a cell in the Alpha Intake Unit (AIU) after it was determined that he would be unable to go before a county judge that day. When the inmate who murdered the father arrived at the jail, he was booked by a county corrections officer under the booking policy at the time that required the officer to ask an arriving inmate several questions, to observe the inmate's demeanor, to review any additional information provided about the inmate, and then to classify the inmate as either high or low risk. Under the policy, if there was no information provided about the inmate's previous history, the policy did not require the officer to seek such information. Incoming inmates classified as low risk, including those transferred from other correctional facilities, were placed in the AIU for a 72 hour observation period, after which their classification was reviewed. If classified as high risk, inmates were placed in a separate housing unit. The booking officer was unaware that the prison inmate had been in segregation 23 hours a day at a high security prison, that he had a history of mental illness, and that the assault related to his court appearance had been an unprovoked, violent attack on a fellow inmate. The officer classified him as low risk, based on the information she had and the inmate's calm, polite demeanor during the booking process. (Sherburne County Jail, Minnesota)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Norman v. Schuetzle, 585 F.3d 1097 (8th Cir. 2009). A prisoner brought a § 1983 claim against various prison officials for their alleged failure to protect him from an attack by a fellow inmate. The district court granted qualified immunity to all but four officials. The four officials appealed. The appeals court reversed and remanded. The appeals court held that: (1) the warden did not violate the Eighth Amendment rights of the prisoner when an inmate with a violent history was allowed to remain in the general population after an incident in which he cut a "C" into the prisoner's hair to identify him as child molester while performing a haircut; (2) the first case worker did not violate the prisoner's Eighth Amendment rights when he failed to take additional security measures; (3) the second worker did not violate the prisoner's Eighth Amendment rights when she did nothing after seeing a logbook entry; and (4) it was not clearly established that the director's actions of allowing other inmates to view complaints would unreasonably subject the prisoner to a threat of substantial harm. (North Dakota State Penitentiary)

U.S. District Court
SUICIDE

Powers-Bunce v. District of Columbia, 594 F.Supp.2d 54 (D.D.C. 2009). The mother of a detainee who hung himself in a holding cell at a police precinct headquarters brought an action against the District of Columbia and individual police and Secret Service officers alleging constitutional violations and tort claims for her son's suicide. The detainee hung himself shortly after he was arrested by the Secret Service for cocaine possession and driving with a suspended license. The detainee had been placed in a jail cell away from other detainees around 2:00 a.m. No one checked on the detainee while he was alone in his cell between 2:30 a.m. and 4:16 a.m. He was found hanging from the bars of the jail cell by his tube socks tied in a knot around 4:16 a.m. The district court dismissed claims against the police officers and the Secret Service officers in their entirety. The court held that the arresting Secret Service officers were not the custodians of the detainee and therefore had no "special relationship" with the detainee giving rise to an affirmative duty to resuscitate the detainee, as would support the due process claims of the detainee's mother against the officers for deliberate indifference in their failure to resuscitate. The court found that although the officers had taken temporary custody of the detainee and might have obtained a key to the cell, the District, not the officers, was the custodian which owed an affirmative duty of protection to the detainee. (Metropolitan Police Dept., 3rd District Precinct Headquarters, District of Columbia)

U.S. District Court
PRISONER SUICIDE

Powers-Bunce v. District of Columbia, 659 F.Supp.2d 173 (D.D.C. 2009). A mother, for herself and as the personal representative of an arrestee who hanged himself in a holding cell at a police precinct shortly after he was arrested by the United States Secret Service, brought an action against the District of Columbia and several police and Secret Service officers. The District of Columbia moved for judgment on the pleadings, or in the alternative, for summary judgment. The district court granted the motion. The court held that: (1) the District of Columbia did not violate the Fifth Amendment right of the arrestee to be free from deliberate indifference to his substantial risk of committing suicide; (2) the District of Columbia could not be held liable for a police officers'

failure to attempt to revive the arrestee; and (3) the District of Columbia could not be held liable for officers' inadequate training and supervision. The court noted that although a Secret Service officer suspected the arrestee was under the influence of cocaine after he had observed his jittery behavior and discovered a half-used bag of cocaine on the arrestee during a search at the precinct, there was no evidence that cocaine-users were a greater suicide risk or that jittery behavior was a warning sign of impending suicide. According to the court, there was no evidence that police officers who accepted custody of the arrestee had subjective knowledge of his suicidal tendencies or actually drew the inference that the arrestee was a suicide risk, and there was no evidence that a Secret Service officer communicated either his suspicion of the arrestee's cocaine use or his observation of jittery behavior to either police officer. The court held that inadequate training and supervision of District of Columbia police officers, who failed to follow police department procedures when they did not attempt to revive the arrestee who had hanged himself in his cell, failed to expeditiously obtain assistance from Emergency Medical Services, and failed to maintain and operate the video surveillance system, did not reflect a deliberate or conscious choice by the District of Columbia, as required to hold the District of Columbia liable under § 1983 for the detainee's death. (District of Columbia Metropolitan Police Department, Third District Precinct)

U.S. District Court
SUICIDE ATTEMPT

Proctor v. Applegate, 661 F.Supp.2d 743 (E.D.Mich. 2009). State prisoners brought a § 1983 action against Michigan Department of Corrections (MDOC) employees and multiple prison facilities, alleging violations of their constitutional rights. The defendants moved to dismiss on statute of limitations grounds and for failure to state a claim upon which relief could be granted. The district court granted the motion in part and denied in part. The court held that state prison regulations which permitted the confiscation of certain types of mail and prohibited "copyrighting" of names served a legitimate and neutral government purpose, and thus did not violate the prisoners' constitutional rights. The court held that the prisoners' § 1983 claims against hearing officers relating to prison misconduct proceedings were barred by absolute judicial immunity.

The court held that allegations in the prisoner's complaint that an MDOC employee would frequently shake down his cell looking for prohibited Uniform Commercial Code (UCC) materials, and that the employee would leave the cell in disarray, failed to state a § 1983 claim against the employee for violation of the prisoner's constitutional rights, given that the prisoner failed to even allege that any legal materials were confiscated.

According to the court, an employee's rejection of the prisoner's letters to nine state senators and representatives because the prisoner did not pay for postage and because the letters did not qualify as legal mail, as they were not addressed to a court, attorney, or a party to a lawsuit, did not implicate the prisoner's constitutional rights. The court held that a prisoner's allegation in his complaint that an MDOC employee did not refer him for psychiatric treatment after he attempted to commit suicide sufficiently stated a § 1983 claim for an Eighth Amendment violation based on denial of medical treatment. (Michigan Department of Corrections)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
SUPERVISION
WRONGFUL DEATH

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
PROTECTION FROM
HARM

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
WRONGFUL DEATH
MEDICAL CARE

Smith v. District of Columbia, 674 F.Supp.2d 209 (D.D.C. 2009). The parent of a deceased inmate brought an action against the District of Columbia, stemming from the inmate's death following incarceration. Prior to being incarcerated, the inmate was partially paralyzed and confined to a wheelchair as a result of gunshot wounds. The parent alleged that while confined, these injuries prompted the inmate to make repeated "requests for medical care treatment, and attention including, but not limited to, providing medication when ordered by his physicians, providing prompt and adequate dressing changes to prevent the formation and growth of decubitus sores, [and] providing sanitary cell conditions." The parent alleged that the District failed to "provide a healthcare system that included prompt, proper, adequate, and reasonable medical care and treatment to all persons incarcerated under their care, custody, and supervision." The inmate died eight months after his release from the facility. The district court granted the District's motion for dismissal. The court held that the parent failed to assert a direct causal link between a municipal policy or custom and the alleged constitutional deprivation. (Correctional Treatment Facility, District of Columbia)

U.S. Appeals Court
MEDICAL CARE

Spears v. Ruth, 589 F.3d 249 (6th Cir. 2009). The estate of a deceased detainee brought a § 1983 action against a police officer and a city, alleging deliberate indifference to the detainee's serious illness or injury while in the officer's care. The district court denied summary judgment and the officer and city brought an appeal. The appeals court reversed and remanded. The court held that the pretrial detainee's condition and need for medical attention was not so obvious to the police officer as to establish the existence of a serious medical need, for the purposes of a claim of deliberate indifference in violation of due process. The officer allegedly failed to inform emergency medical technicians (EMT) on the scene and at the jail that the detainee, who later died from respiratory and cardiac failure resulting from cocaine use, had admitted that he smoked crack cocaine. According to the court, the EMTs and jail nurse, who presumably had a greater facility than the average layperson to recognize an individual's medical need, observed the detainee's behavior and administered tests based on those observations, and both the EMTs and the jail officers concluded that the detainee did not need to be transported to the hospital. After admission to the jail, the detainee continued to hallucinate and officers placed him in a restraint chair "for his own safety," tasing him to "relax his muscles." The detainee remained restrained for approximately three and a half hours, during which time he was calm but continued to hallucinate. Shortly after the officers released him from the chair, the detainee began to shake and spit up blood and then became unconscious. He was taken to a hospital where he was diagnosed with respiratory and cardiac failure and multi-organ failure resulting from cocaine use. He lapsed into a coma and died eleven months later. (City of Cleveland, Bradley County Justice Center, Tennessee)

U.S. Appeals Court
MEDICAL CARE

Tamez v. Manthey, 589 F.3d 764 (5th Cir. 2009). Survivors of a pretrial detainee, who died while in custody from acute cocaine intoxication when the bag of cocaine that he swallowed before his arrest burst in his intestines, brought a § 1983 action, alleging that police officers and prison officials were deliberately indifferent to the detainee's need for medical care. The district court granted the summary judgment in favor of the defendants. The plaintiffs appealed. The appeals court affirmed. The court held that police detectives were not deliberately indifferent to the medical needs of the detainee. The court noted that the detectives' knowledge that the detainee had pupils that were maximally dilated and that he needed medical clearance did not show that the detectives were aware of an unjustifiably high risk to the detainee's health, or that the risk to the detainee's health was so obvious that they should have inferred such a risk. According to the court, jailers were not deliberately indifferent to the medical needs of the detainee. According to the court, the fact that the jailers were told the detainee needed medical clearance and that he had dilated pupils did not show that the jailers knew or should have known of a substantial risk to the detainee's health. (Harlingen City Jail, Cameron County Carrizales-Rucker Detention Center, Texas)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Thomas v. Pennsylvania Dept. of Corr., 615 F.Supp.2d 411 (W.D.Pa. 2009). A state prison inmate who was an above-the-knee amputee brought a § 1983 action against the Pennsylvania Department of Corrections and individual corrections officials and medical personnel, alleging that denial of his request for a handicap cell, and the delay in replacing and inadequate replacement of his prosthesis, violated the Eighth Amendment, Rehabilitation Act, Americans with Disabilities Act (ADA), and state law. The district court granted summary judgment for the defendants. The court found that there was no evidence that state corrections officials were aware that the amputee prisoner was at risk of assault at the hands of fellow inmates due to the denial of his request for a handicap cell, as required to support the prisoner's Eighth Amendment failure-to-protect claim against officials. Except for a single reference to an altercation with a fellow prisoner, the prisoner's requests for a handicap cell included no indication that the prisoner was concerned about being attacked, only that he was having difficulty moving about in a standard cell. (State Correctional Institution at Camp Hill, State Correctional Institution at Houtzdale, Pennsylvania)

U.S. District Court
SUICIDE ATTEMPT

Vann v. Vandenbrook, 596 F.Supp.2d 1238 (D.Wis. 2009). A prisoner brought a § 1983 action against a crisis intervention worker, registered nurse, and several corrections officers, alleging deliberate indifference to a serious medical need in violation of the Eighth Amendment. The prisoner moved to proceed in forma pauperis and for the appointment of counsel. The district court granted the motion to proceed in part and denied in part, and denied the motion for appointment of counsel. The court held that the prisoner stated a § 1983 claim against the intervention worker and the unknown officer where they were aware of the prisoner's suicide risk when the worker refused to place the prisoner in an observation program and the officer provided the prisoner with a razor and a nail clipper and left the prisoner unattended. The court found that the registered nurse's failure to provide treatment to the prisoner constituted deliberate indifference to the prisoner's serious medical needs, as required for the prisoner to state a § 1983 claim for violation of the Eighth Amendment, where the prisoner had sustained 133 self-inflicted wounds that were bleeding and the nurse merely inspected his wounds. According to the court, the corrections officers who performed an emergency cell extraction of the prisoner following his suicide attempt, transported him to a day room where the prison's registered nurse performed an inspection of the prisoner's wounds, thus precluding the prisoner's § 1983 claim against the officer for deliberate indifference to his serious medical needs in violation of Eighth Amendment. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Vaughn v. Gray, 557 F.3d 904 (8th Cir. 2009). A detainee's sister brought a § 1983 action against several officers and county employees alleging they were deliberately indifferent to the detainee's serious medical needs which resulted in his death. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court affirmed. The court held that a genuine issue of material fact existed as to whether jail officials deliberately disregarded the medical needs and condition of the detainee. The detainee was charged with first-degree sexual assault. During the jail's intake procedure, he completed a medical intake form, indicating that he had a history of mental illness, headaches, epilepsy/seizures, ulcers, and kidney/bladder problems, but indicating that he did not have a history of heart problems or high or low blood pressure. Although the detainee had no medications with him upon his arrival at the jail, his mother later brought his medications, including an anti-depressant. He received his medication for several days until the

prescription ran out. He missed several doses before a new prescription arrived. During the time he was without medication, his cellmate told jail employees that the detainee had been ingesting shampoo and engaging in other odd behavior. The detainee was moved to an isolation cell to be monitored on an hourly basis. He was observed vomiting and asked to see a nurse but he was not provided access. He was later found dead in his cell. An autopsy determined that he died of natural causes: arteriosclerotic cardiovascular disease, causing a heart attack that resulted in his death. (Greene County Jail, Arkansas)

U.S. District Court
TRANSPORTATION

Wilbert v. Quarterman, 647 F.Supp.2d 760 (S.D.Tex. 2009). A state prisoner, proceeding pro se, brought a § 1983 action alleging that two correctional officers violated his Eighth Amendment right to be free from cruel and unusual punishment when they allowed him to be transported without seatbelts, resulting in injuries following the vehicle's sudden stop. The district court granted the defendants' motion to dismiss. Although the court held that the prisoner stated a claim of deliberate indifference in violation of the Eighth Amendment, the prisoner did not timely file a grievance and therefore the prisoner did not satisfy the exhaustion of the administrative remedies requirement of the Prison Litigation Reform Act. The prisoner alleged that he had requested a seatbelt and was denied, that he was not properly seated in the Texas Department of Criminal Justice (TDCJ) transport van, that the van was traveling at an unsafe speed, and that he was injured when the van suddenly stopped. (Texas Department of Criminal Justice, McConnell Unit)

U.S. District Court
SUICIDE
SUICIDE ATTEMPT

Wilson v. Taylor, 597 F.Supp.2d 451 (D.Del. 2009). The mother of a deceased prisoner, who died in his solitary cell as a result of asphyxia due to hanging after an apparent attempt to feign suicide, brought a § 1983 action against Delaware Corrections officials. The district court denied the defendants' motion for summary judgment. The court held that fact issues precluded summary judgment on the mother's § 1983 claim, custom or policies claim, deliberate indifference claim, qualified immunity grounds, wrongful death claim, and claim for punitive damages. The court found genuine issues of material fact as to: (1) whether the prisoner's detention was valid at the time of his death; (2) whether Delaware Corrections officials failed to train and or maintain customs, policies, practices, or procedures, relating to the prisoner's repeated release inquiry; (3) whether Delaware Corrections officials' ignored the prisoner's risk of hurting himself to get the attention of guards as to his repeated release inquiries; (4) whether a correctional officer acted in good faith and without gross or wanton negligence in throwing the prisoner against a bench in his cell while holding his throat and threatening him verbally; and (5) whether Delaware Corrections officials' conduct in ignoring the prisoner's repeated release inquiries was a proximate cause of the prisoner's ultimate death. The court also found that fact issues existed as to whether Delaware Corrections officials acted outrageously and with reckless indifference to the rights of others, precluding summary judgment on the mother's § 1983 claim for punitive damages. (Delaware Correctional Center)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

Wright v. Goord, 554 F.3d 255 (2nd Cir. 2009). A prisoner brought two § 1983 actions against prison officers, alleging excessive force and retaliation in violation of the First and Eighth Amendments. The district court summarily dismissed both actions. The prisoner appealed. The appeals court affirmed. The court held that the prisoner did not sufficiently allege excessive force by the prison officers in violation of the Eighth Amendment where the prisoner failed to concretely allege a physical assault by an officer. According to the court, the assault alleged in his complaint involved the prisoner's cellmate, and the prisoner proffered no evidence to support the suggestion that the officers returned a cane to a cellmate after learning that the cellmate had allegedly hit the prisoner with a cane. The court found that a prison officer's action in grabbing the prisoner did not constitute "excessive force" in violation of the Eighth Amendment. The court noted that apart from several minutes where the prisoner alleged he experienced a shortness of breath, the inmate did not allege any physical injuries resulting from the encounter. (Coxsackie Correctional Facility, New York)

U.S. District Court
USE OF FORCE

Zimmerman v. Schaeffer, 654 F.Supp.2d 226 (M.D.Pa. 2009). Current and former inmates at a county jail brought a § 1983 action against the county, corrections officers, and prison officials, alleging that they were abused by officials during their incarceration in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether corrections officers and prison officials knew or should have known that an officer would apply excessive force to the inmate by shocking him when he was restrained and whether they could have prevented the officer's excessive use of force; (2) whether the inmates exhausted administrative remedies by filing grievances regarding use of a restraint chair, lack of mattresses, inability to shower, cell conditions, and issues with mail; (3) whether the use of mechanical restraints against the inmates constituted wanton infliction of pain in violation of the Eighth Amendment; (4) whether an inmate complied with officials when extracted from a cell, rendering the use of oleoresin capsicum spray excessive and unjustified; (5) whether cell conditions posed a substantial risk of harm to inmates and whether corrections officers and prison officials were deliberately indifferent to that risk; and (6) whether the warden of the county jail was aware of and condoned the use of excessive force against inmates at jail. (Mifflin County Correctional Facility, Lewistown, Pennsylvania)

2010

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Brown v. Callahan, 623 F.3d 249 (5th Cir. 2010). The estate of a pretrial detainee, who died of a gastrointestinal hemorrhage while in pretrial custody, brought a § 1983 action against a county sheriff in his individual and official capacity for failure to train and supervise the jail's medical employees and for maintaining an unconstitutional policy of deliberate indifference to serious medical needs. The district court denied the sheriff's motion for summary judgment based on qualified immunity. The sheriff appealed. The appeals court reversed. The court held that the county sheriff was not deliberately indifferent to a known or obvious risk of inadequate medical care toward pretrial detainees arising from the supervising jail physician's unpleasant attitude or practice

of intimidation toward jail nurses, which allegedly discouraged nurses from calling the physician or sending patients to the emergency room. The court noted that the detainee's gastrointestinal hemorrhage was neither referred for treatment by a hospital emergency room nor treated by the jail's supervising physician. According to the court, despite the physician's bad temper, despite one nurse's expressed fear of an "ass-chewing" from the physician had she sent the detainee to the emergency room, and even though the nurses and physician had disagreed in two instances on whether inmates should be sent to an emergency room, the two nurses had previously decided to send inmates to the emergency room over the physician's objections. The sheriff had reportedly counseled the physician and ordered the nurses to act appropriately notwithstanding the physician's distemper, and there was no prior instance in which the sheriff's instruction to the nurses was not followed. (Wichita County Jail, Texas)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
SUPERVISION

Brown v. North Carolina Dept. of Corrections, 612 F.3d 720 (4th Cir. 2010). An inmate brought a § 1983 suit against correctional officers and the North Carolina Department of Corrections, claiming that they violated his Eighth Amendment rights by being deliberately indifferent to the serious harm he suffered at the hands of a fellow inmate. The district court dismissed the action and the inmate appealed. The appeals court vacated and remanded. The court held that the prisoner, who suffered significant physical injuries as the result of another inmate's attack, sufficiently alleged a § 1983 claim of deliberate indifference to his Eighth Amendment rights against an officer who allegedly observed the altercation and failed to respond, and another officer who allegedly was aware of the other inmate's grudge but still sent the prisoner into a housing block to pick up supplies. The court found that the inmate stated a § 1983 claim against a corrections officer of deliberate indifference by alleging that an officer was in "the Block" when the assault occurred, and a reasonable person could infer from that statement that the officer was aware of the attack, and that his failure to intervene represented deliberate indifference to a serious risk of harm. (Alexander Correctional Institute, North Carolina)

U.S. District Court
PRISONER SUICIDE

Choate v. Merrill, 685 F.Supp.2d 146 (D.Me. 2010). The estate of a prison inmate who committed suicide brought an action against individual prison officers, administrators of the correctional facility, and the facility's health care provider, claiming that their violations of the inmate's civil and constitutional rights caused his death. All defendants moved to dismiss and/or for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate was in fact dead when a prison officer first discovered him hanging in his cell. (Special Management Unit, Maine State Prison)

U.S. Appeals Court
MEDICAL CARE
PRISONER SUICIDE

Clouthier v. County of Contra Costa, 591 F.3d 1232 (9th Cir. 2010). The estate of a pretrial detainee brought a § 1983 action against a county, mental health specialist, and two sheriff's deputies alleging they violated the detainee's due process rights by failing to prevent his suicide while he was confined. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the estate had to show that the detainee was confined under conditions posing a substantial risk of serious harm and that correction officers were deliberately indifferent to that risk. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the mental health specialist at the jail, who was on notice of the pretrial detainee's suicidal condition, was deliberately indifferent to a substantial risk of harm to the detainee when she removed the detainee from an observation log and told deputies that the detainee could be given regular clothes and bedding. According to the court, it was clearly established at the time of detention that a reasonable mental health professional would not have removed key suicide prevention measures put in place by a prior mental health staff member, and therefore the specialist was not entitled to qualified immunity. The court found that the estate failed to establish that a sheriff's deputy at the jail knew that moving the detainee to the general population in the jail posed a substantial risk of serious harm to the detainee, where the deputy only knew that the detainee had missed meals and free time, and that the detainee had been taken off an observation log. The court noted that the deputy spoke to the detainee all weekend and noted he had a positive outlook on wanting to get out of the room, and earlier that day the mental health specialist found that the detainee was not actively suicidal at the time.

The court held that the estate failed to establish that another sheriff's deputy knew that the detainee was suicidal and deliberately ignored that risk, where the deputy knew only that the detainee was suicidal and needed to be on 15-minute checks and the mental health specialist told the deputy to give the detainee his regular clothes and bedding. The court noted that nothing indicated that the deputy saw the detainee's knotted sheet. According to the court, the county did not have longstanding custom or practice of moving pretrial detainees from an observation cell into the general population without consultation with mental health staff, or a longstanding practice of miscommunication between mental health staff and custodial staff. The court found no pattern of repeated wrongful conduct by county staff, and nothing that indicated another suicide resulted from the improper transfer of a detainee. The court found that the affidavit of the estate's expert, who opined that custodial staff and mental health staff did not work together as a team, was speculative and conclusory, and thus was insufficient to avoid summary judgment. The court noted that the factual basis for the expert's declaration was limited to a sequence of events and statements of participants surrounding the detainee's transfer to the general population in the jail, and the report did not address the key question of whether the alleged disconnect was so obvious as to have been deliberate indifference. (Contra Costa County Martinez Detention Facility, California)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SUPERVISION
THREATS
USE OF FORCE

Cummings v. Harrison, 695 F.Supp.2d 1263 (N.D.Fla. 2010). A Black Muslim state prisoner brought a civil rights action against a prison warden and correctional officers, alleging, among other things, that the defendants used excessive force against him in violation of the Eighth Amendment and retaliated against him, in violation of First Amendment, for submitting grievances. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether correctional officers' repeated verbal threats, including death threats, combined with physical assaults, against the Black Muslim prisoner caused the prisoner extreme psychological harm, and as to whether the

officers maliciously and sadistically used force against the prisoner because he was black or because he practiced the Muslim faith. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the prison warden had the ability to remove the Black Muslim prisoner from the supervision of the correctional officer who was allegedly verbally and physically abusing him, but refused to do so, and denied the prisoner's request for protective custody. (Taylor Correctional Institution, Florida)

U.S. Appeals Court
FIRE

Davis v. Oregon County, Missouri, 607 F.3d 543 (8th Cir. 2010). A pretrial detainee brought an action under § 1983 and various state law authority against a county, county sheriff's department, and a sheriff, alleging the defendants violated his rights in failing to ensure his safety after a fire broke out at the county jail. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed. The court held that the county jail's smoking policy did not demonstrate that the sheriff acted with deliberate indifference in violation of the due process rights of the detainee caught in his cell during a jail fire, even if a jailer supplied cigarettes to inmates, since the jail had an anti-smoking policy in effect at all relevant times. The court noted that the jailer who allegedly supplied the cigarettes to the inmates had retired nine months before the fire occurred, and jail officials made sweeps for contraband as recently as five days before the fire. According to the court, the county jail's inoperable sprinklers and lack of extra fire safety equipment such as oxygen tanks did not amount to deliberate indifference in violation of the due process rights of the detainee caught in his cell during a fire, where jail officials took action to deal with fire hazards by prohibiting smoking and searching for contraband, and fire extinguishers and smoke detectors were present at the time of the fire. The court held that any failure of the sheriff to engage his officers in more exhaustive emergency training did not amount to deliberate indifference in violation of the due process rights of the detainee caught in his cell during a fire, even if the officers' lack of training presented a substantial safety risk. The court noted that the officers' actions in removing inmates from their cells after they discovered the fire demonstrated that they did not disregard the risk. (Oregon County Jail, Missouri)

U.S. District Court
DUTY TO PROTECT

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
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

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
WRONGFUL DEATH
MEDICAL CARE

Estate of Crouch v. Madison County, 682 F.Supp.2d 862 (S.D.Ind. 2010). An inmate's estate brought a § 1983 suit against a county and corrections officers, claiming that the officers were deliberately indifferent to the inmate's serious medical needs in violation of the Eighth Amendment, and that the county was liable for failure to train its officers or establish policies regarding the medical care of inmates. The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate did not show signs of an objectively serious need for medical attention prior to 3:00 a.m. on the day of his death from a drug overdose, at which time he was found unresponsive. According to the court, the Indiana Tort Claims Act entitled the corrections officers and county to immunity on state law negligence claims arising from the inmate's death, which occurred while he was assigned to a community corrections program maintained under the supervision of a governmental entity. (Madison County Community Justice Center, Indiana)

U.S. Appeals Court
PLRA- Prison Litigation
Reform Act
USE OF FORCE

Fletcher v. Menard Correctional Center, 623 F.3d 1171 (7th Cir. 2010). A state prisoner subject to the Prison Litigation Reform Act's (PLRA) three strikes provision brought a civil rights action against a prison, warden, and various prison employees, alleging the defendants violated his federal constitutional rights by using excessive force to restrain him and by recklessly disregarding his need for medical attention. The district court dismissed the complaint for failure to pre-pay the filing fee, and a motions panel authorized the prisoner's appeal. The appeals court affirmed. The court held that that while the prisoner's allegation of excessive force satisfied the three strikes provision's imminent danger requirement, the prisoner failed to exhaust administrative remedies under the PLRA. The court noted that the prisoner had an administrative remedy under an Illinois regulation providing an emergency grievance procedure for state prisoners claiming to be in urgent need of medical attention. (Menard Correctional Center, Illinois)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Gayton v. McCoy, 593 F.3d 610 (7th Cir. 2010). The administrator of a female detainee's estate brought a § 1983 action against correctional facility officials and nurses, alleging they violated her due process rights by failing to provide adequate medical care. The district court entered summary judgment for the defendants, and the administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court did not abuse its discretion in finding a physician unqualified to offer expert testimony that the detainee's death from non-specific heart failure would have been prevented had she been given her congestive heart failure medication, where the physician lacked specific knowledge in cardiology and pharmacology, and he provided no basis for his testimony except that the detainee's medication treated heart disease. But the appeals court held that the district court abused its discretion in finding the physician unqualified to offer expert testimony that the detainee's vomiting combined with her diuretic medication may have contributed to her tachycardia and subsequent death from non-specific heart failure.

The court held that a correctional facility nurse who examined the detainee during intake was not deliberately indifferent to his serious medical needs posed by her heart condition, as required to establish violation of the detainee's due process right to adequate medical care in the § 1983 action. The court noted that, even though the nurse failed to follow the facility's protocol requiring her to contact a doctor when an inmate complained of chest pains, the nurse placed the detainee on a list to have her vital signs checked each morning, and the nurse arranged for the detainee to get her congestive heart failure medication. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the nurse who examined the detainee following her complaints of nausea was deliberately indifferent to his serious medical needs posed by her heart condition and vomiting. In its decision, the court noted that "On the other hand, Nurse Pam Hibbert was presented with ample evidence that Taylor needed medical treatment." (Peoria County Jail, Illinois)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Harper v. Lawrence County, Ala., 592 F.3d 1227 (11th Cir. 2010). Following a pretrial detainee's death from alcohol withdrawal while in a county jail, the detainee's estate brought an action against the county, sheriff, police officers, and others under § 1983 and state law, alleging deliberate indifference to the detainee's serious medical needs. The district court denied the defendants' motion to dismiss and the defendants appealed. The appeals court affirmed and reversed in part. The court held that allegations supported a claim that jailers were deliberately indifferent to the detainee's serious medical needs, but that the sheriff and others did not have actual knowledge of the detainee's erratic and strange behavior while in jail. The court found that allegations supported a claim that the sheriff and jail administrators were deliberately indifferent. The court held that allegations that jailers were told by other inmates and other jail staff that the pretrial detainee was displaying erratic and strange behavior, and that jailers took no steps to secure immediate medical attention for the detainee, supported a § 1983 claim that jailers were deliberately indifferent to the detainee's serious medical needs under the due process clause. The court held that the detainee's estate failed to allege how the sheriff and jail administrators could possibly have had actual knowledge of the detainee's erratic and strange behavior while in jail, as required to support a § 1983 claim alleging deliberate indifference to the detainee's serious medical needs.

According to the court, for the purposes of a jailer's claim of qualified immunity from the § 1983 claim that he was deliberately indifferent to the pretrial detainee's serious medical needs under the due process clause, it was clearly established at the time of the detainee's confinement that a jail official who was aware of, but ignored, dangers of acute alcohol withdrawal and waited for an emergency before obtaining medical care was deliberately indifferent to the inmate's constitutional rights.

The court found that the complaint's specific allegations that the sheriff and jail administrators who were responsible for management and administration of the jail had customs or policies of improperly screening inmates for alcohol withdrawal and improperly handling inmates addicted to alcohol or drugs, together with its factual detail concerning a prior similar incident, satisfied the pleading standards for stating a § 1983 claim of deliberate indifference to the pretrial detainee's serious medical needs under the due process clause based on supervisor liability. (Lawrence County Jail, Alabama)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT
MEDICAL CARE

Harriman v. Hancock County, 627 F.3d 22 (1st Cir. 2010). An arrestee brought an action against a county, sheriff, and corrections officers alleging excessive force, false arrest, conspiracy, deprivation of due process, negligence, and intentional infliction of emotional distress. The district court granted the defendants' motion for summary judgment and the arrestee appealed. The appeals court affirmed. The court held that in the detainee's excessive force claim the detainee's assertion that officers' accounts of his fall in his jail cell were inconsistent and inherently unbelievable was insufficient to defeat the defendants' motion for summary judgment. The court noted that the detainee conceded he had no recollection of an alleged beating, the officers were consistent in reporting that they saw the detainee fall and heard sounds in his cell that resembled a fall, all officers reported that they did not strike the detainee and did not see anyone strike the detainee, and a neurologist did not opine on the cause of the detainee's injuries. (Hancock County Jail, Maine)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

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

U.S. District Court OFFICER ON PRISONER ASSAULT SEXUAL ASSAULT	<p><i>Hawkins v. Brooks</i>, 694 F.Supp.2d 434 (W.D.Pa. 2010.) A state prisoner brought a pro se § 1983 action against various prison officials and corrections officers, alleging retaliation, harassment, due process violations, defamation of character, and mental anguish. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the prisoner's conduct of pressing charges against a corrections officer who the prisoner claimed raped and impregnated her and complaining about other officers' alleged harassment amounted to a "constitutionally protected activity," as required for the prisoner to state a § 1983 retaliation claim. The court found that the prisoner had no liberty interest in her place of confinement, transfer, or classification, and thus, prison officials' alleged refusal to have the prisoner transferred to an out-of-state institution did not violate her due process rights. The court found that the prisoner's assertions that she made supervisory prison officials aware of the harassment and retaliation she allegedly suffered at the hands of correctional officers as a result of her pressing rape charges against a correctional officer at another facility, and that none of the supervisory officials offered assistance or took any corrective action, were sufficient to state a claim for supervisory liability, in her § 1983 retaliation action. (State Correctional Institution at Cambridge Springs, Pennsylvania)</p>
U.S. District Court USE OF FORCE WRONGFUL DEATH	<p><i>Hunt ex rel. Chiovari v. Dart</i>, 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)</p>
U.S. District Court PRISONER ON PRISONER ASSAULT PROTECTION FROM HARM	<p><i>Jackson v. Stevens</i>, 694 F.Supp.2d 1334 (M.D.Ga. 2010.) An inmate brought a § 1983 suit against a prison official asserting an Eighth Amendment deliberate indifference claim. The official moved for summary judgment and the district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison official had subjective knowledge of a serious risk of harm to the inmate from a second inmate, whom the official heard say that he would try to kill or harm the first inmate if they were put in a cell together, and whether the official disregarded the risk when she admonished the second inmate before placing him in a cell with the first inmate. Immediately after the official closed the cell door, the second inmate immediately hit the inmate. (Washington State Prison)</p>
U.S. District Court MEDICAL CARE SUICIDE ATTEMPT	<p><i>Jessup v. Miami-Dade County</i>, 697 F.Supp.2d 1312 (S.D.Fla. 2010). A pre-trial detainee who had been placed on suicide precaution status at a county detention center for women, filed a state action against a corrections officer and the county, asserting negligence and claims under § 1983 for the officer's deliberate indifference to his serious medical needs, and against the county for failure to train or discipline staff. The defendants removed the case to federal court and moved for summary judgment. The district court granted the motion. The court held that the detainee's actions of drinking from a toilet, smearing menstrual blood on a window, and stepping on and off a ledge in her cell, did not indicate a "strong likelihood" that she was about to inflict self-harm, as required for jail officials to be liable for deliberately disregarding the detainee's serious medical needs in violation of the Fourteenth Amendment, when they failed to place her in four-point restraints. The detainee subsequently injured her head. The court noted that the detainee's activities were bizarre but not violent, aggressive or out of control as would require restraints. According to the court, a jail official did not act in a fashion "beyond gross negligence," as required to hold her liable for deliberate disregard of the pre-trial detainee's serious medical needs, in violation of the Fourteenth Amendment, when the official failed to act to stop the detainee from self-inflicting head and nose injuries by banging her head against a cell wall during her confinement after being placed on a suicide watch. The officials immediately ordered the detainee to stop head banging activity and tried to open her cell. (Miami-Dade Women's Detention Center, Florida)</p>
U.S. District Court OFFICER ON PRISONER ASSAULT USE OF FORCE BRUTALITY	<p><i>Johnson v. Deloach</i>, 692 F.Supp.2d 1316 (M.D.Ala. 2010). A state prisoner brought a § 1983 action against prison supervisory officials and correctional officers, challenging the constitutionality of actions taken against him during his incarceration. The prisoner alleged that an officer, without justification, repeatedly slapped him about his face and head causing the back of his head to strike the wall, and the prisoner "became dazed and disoriented..." The officer allegedly stopped slapping the prisoner and then grabbed the prisoner around his throat and began choking him while shoving his back and head against the wall. The officer then allegedly stopped choking the prisoner, lifted the prisoner off the floor and slammed him to the floor causing his back, head and left leg to hit a pole protruding from the wall. According to the prisoner, two other officers watched these actions and failed to intervene. The district court granted summary judgment for the defendants in part and denied in part. The court held that state prison officials were absolutely immune from the prisoner's § 1983 claims brought against them in their official capacities, since Alabama had not waived its Eleventh Amendment immunity, and Congress had not abrogated Alabama's immunity. The court held that summary judgment was precluded by genuine issues of material fact regarding the need for the use of force against the state prisoner by a correctional officer and the amount of force used by the officer, as to whether the officer acted "maliciously and sadistically" to cause harm, and as to whether two other officers witnessed the use of excessive force and failed to intervene. The court noted that a correctional officer who is present at a scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force can be held personally liable under § 1983 for his nonfeasance. (Draper Correctional Facility, Alabama)</p>

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

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
JUVENILES
USE OF FORCE

Lewis v. Mollette, 752 F.Supp.2d 233 (N.D.N.Y. 2010). A former juvenile inmate at the Office of Child and Family Services (OCFS) brought a § 1983 action against OCFS employees, alleging use of excessive force and failure to intervene. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) the events leading up to the use of a physical restraint technique (PRT) on the juvenile inmate by OCFS employees; (2) the need for a second employee to assist the first employee with the PRT; and (3) the cause of the arm fracture the inmate sustained during the incident. (Highland Office of Child and Family Services, New York)

U.S. District Court
RELEASE
MEDICAL CARE
WRONGFUL DEATH

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
PRISONER ON PRISONER
ASSAULT

Lyons v. Holden-Selby, 729 F.Supp.2d 914 (E.D.Mich. 2010). An inmate who had been assaulted by his cellmate sued state correctional officers, claiming that they were deliberately indifferent to his safety and welfare, in violation of his rights under the Eighth Amendment. The officers moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine issues of material fact as to whether the corrections officers failed to act in spite of knowledge of a substantial risk of harm to the inmate. The court noted that a history of assault by the inmate's cellmate was relevant to the state corrections officials' knowledge of a substantial risk of harm to the inmate in a suit claiming an Eighth Amendment violation in connection with an assault by cellmate. The court also held that the state corrections officers were not entitled to qualified immunity on the inmate's claim of an Eighth Amendment violation. (Southern Michigan Correctional Facility, Jackson, Michigan)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT
SUPERVISION

Mitchell v. Rappahannock Regional Jail Authority, 703 F.Supp.2d 549 (E.D.Va. 2010). A female inmate brought an action against a regional jail authority and correctional officers who held the ranks of colonel, lieutenant, captain, sergeant, and corporal, alleging under § 1983 that the defendants violated the Eighth Amendment, and asserting state-law claims for assault and battery, gross negligence, and negligent retention. The district court denied the defendants' motion to dismiss. The court held that the inmate's allegations in her complaint: (1) of over ten instances of sexual assaults by a correctional officer, under circumstances where his superiors were in a position to have knowledge of what was happening at various times; (2) that each named superior witnessed or participated in several of those actions; (3) that all superiors had direct knowledge of the officer's personal remarks to the inmate; (4) and that the officer's obsession with the inmate was a matter of commentary among all correctional staff, were sufficient to state a § 1983 Eighth Amendment claim for supervisory liability against the superiors. The inmate also alleged that each superior witnessed several incidents where the officer followed the inmate into a storage room and assaulted her.

The inmate also alleged that a corporal, who was in charge of inmate workers, witnessed the correctional officer, in violation of jail regulations, approach her several times while working in the kitchen, and that the corporal told the inmate not to be rude to the officer or she would be fired from her job after the inmate asked the corporal to prevent the officer from moving behind the counter. (Rappahannock Jail Authority, Rappahannock Regional Jail, Virginia)

U.S. District Court
RELEASE

Paine v. Johnson, 689 F.Supp.2d 1027 (N.D.Ill. 2010) affirmed in part 678 F.3d 500. The guardian of the estate of a pretrial detainee, who allegedly suffered from bipolar disorder, brought a § 1983 action against a city and city police officers, alleging civil rights violations in connection with the detainee's arrest and subsequent release from custody without being provided access to mental health treatment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the detainee, who exhibited drastic and unnatural behavior throughout her 28-hour detention, had a serious mental health condition. The court also found a genuine issue of material fact as to whether the arresting city police officer, and other police employees, who witnessed the arrestee singing rap lyrics, taking her clothes off and dancing provocatively for different men, acting erratically, discussing the price of oil, and screaming bizarre and vulgar statements, among other things, had notice that the arrestee had a serious mental health condition that required medical attention. The court noted that a city police officer, who spoke on the telephone with the detainee's mother, and was informed by her mother that the detainee was likely bipolar and might be having an episode, had notice that the detainee had a serious mental health condition that required medical attention, precluding summary judgment.

The court also found genuine issues of material fact as to whether a city police officer, who had actual knowledge of the pretrial detainee's mental health condition based on observations of her behavior while in custody, placed the detainee in a position of heightened risk when she released the detainee from the police station and pointed her toward an area known for violent crime, without providing the detainee with food, money, or medication, and as to whether the officer's conduct "shocked the conscience." The court identified a fact issue as to whether the detainee would not have been raped and seriously injured absent a city police officers' failure to provide the detainee with psychiatric care. The court held that city police officers were not entitled to qualified immunity from the § 1983 claim brought by the mother of the detainee, for unreasonably failing to provide the detainee with mental health care under the Fourth Amendment, as it was clearly established that pretrial detainees were entitled to mental health treatment for serious mental health conditions. On appeal (678 F.3d 500), the appeals court held that the arresting officer was entitled to qualified immunity. The district court also denied qualified immunity for the city police officer who released the detainee, where the law was clearly established that the officer could not release the detainee from custody in a manner that increased her risk of harm. (Chicago Police Department, Illinois)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Parrish v. Ball, 594 F.3d 993 (8th Cir. 2010). A female detainee filed a § 1983 suit against a sheriff and a deputy, individually and in their official capacities, alleging failure to train the deputy, who had sexually assaulted the detainee. After bench trial the district court granted in part and denied in part the sheriff's motion for summary judgment. The sheriff and the detainee cross-appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the sheriff in his official capacity was not liable for the deputy's inadequate training, and that the sheriff in his individual capacity was entitled to qualified immunity from the failure to train claim. The court noted that although the deputy received minimal training at best for his law enforcement position, the inadequacy of his training was not so likely to result in violation of the constitutional rights of the detainee, so that the county could reasonably be said to have been deliberately indifferent to the need for training, especially when the county had no notice at all that a sexual assault was likely. According to the court, there was no patently obvious need to train the deputy not to sexually assault women, and the sexual assault was a consequence too remote to conclude that failure to train the deputy caused him to sexually assault the detainee. (Hot Spring County Sheriff's Department and Jail, Arkansas)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE
MEDICAL CARE
ELECTRONIC
MONITORING

Pourmoghani-Esfahani v. Gee, 625 F.3d 1313 (11th Cir. 2010). A female pretrial detainee brought a § 1983 action against a deputy sheriff, alleging excessive force and deliberate indifference to her serious medical needs. The district court denied the deputy's motion for summary judgment and the deputy appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the deputy sheriff was not qualifiedly immune from the pretrial detainee's § 1983 excessive force claim, since the deputy's alleged actions, including slamming the detainee's head to the floor seven to eight times while she was restrained, if proven, were obviously beyond what the Constitution would allow under the circumstances.

The court held the deputy sheriff's alleged actions or inactions following her altercation with the pretrial detainee, if proven, did not constitute deliberate indifference to the detainee's serious medical needs, where: the detainee alleged that the deputy dispatched her to her cell directly after the altercation; the nurse saw her within approximately two minutes of her arrival in the cell; the nurse informed the deputy that the detainee had a possible nose injury but that her nose was not broken; the nurse and an officer then attended to the detainee within approximately five minutes of the detainee's cellmate's first signals for help; and, the detainee then received continuous medical care until she was taken to hospital. The court noted that no preexisting law clearly established that an approximately two-to-five-minute delay of medical care, either while the detainee moved from a waiting room to her cell following an altercation or while her cellmate waited for the guard to respond to her signaling, was a constitutional violation.

The appeals court accepted the depiction of events from recordings from closed-circuit video cameras placed throughout jail, rather than crediting the detainee's account of the altercation, where the video obviously contradicted the detainee's version of the facts. But the court noted that video failed to convey spoken words or tone and sometimes failed to provide unobstructed views of the events, and the court credited the detainee's version where no obviously contradictory video evidence was available. (Hillsborough County Jail, Florida)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

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
PRISONER SUICIDE

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 a county defendants. Approximately three weeks after he was admitted to the jail the prisoner was found in his cell hanging by his neck from a bed sheet. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the county could not have been directly liable, under Illinois law, for failure to establish and implement the policies and procedures raised in the civil rights complaint, where it was within the purview of the sheriff's office, not the county, to implement policies and procedures within the county jail. The court noted that Illinois sheriffs were independently elected officials not subject to the control of the county. The county also could not have been vicariously liable for the acts of the sheriff and his employees under a respondeat superior theory under Illinois law, as the sheriff was an independently-elected official, answering directly to the electorate, and not having a master/servant relationship with the county board. The court found that the special administrator stated a claim against the county department's superintendent and the county sheriff, in their official capacities, for § 1983 violations, by alleging that the defendants were responsible for the care and management of the prisoners at the county jail, and had policymaking authority to implement appropriate procedures to do so, but acted with deliberate indifference by failing to institute suicide prevention practices. The administrator alleged that the prisoner's suicide was the result of this direct indifference. (Cook County Sheriff, Cook County Department of Corrections, Illinois)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Santiago v. Walls, 599 F.3d 749 (7th Cir. 2010). A state prisoner brought a § 1983 action against certain officers and employees of the Illinois Department of Corrections (IDOC), alleging that they violated his constitutional rights by failing to protect him from other inmates, failing to provide him with medical care, and retaliating against him for speaking out against the IDOC. Following a jury trial, the district court entered judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed in part, reversed and remanded in part. The court held that the prisoner failed to state a claim against two correctional officers for failure to protect him from attack by an inmate. The court also found no claim was stated by the prisoner's allegations that one prison official sprayed him with pepper spray and that, while escorting him to the infirmary, another official "brutally yank[ed] and rip[ped]" backwards on his handcuffs. But the court held that a claim was stated against the prison warden for failure to protect him from an assault by his cellmate. The prisoner alleged that the warden knew or should have known that his cellmate had a history of assaulting his cellmates and that the warden disregarded this risk. Four days prior to his assault, the plaintiff had filed an emergency grievance with the warden, requesting that his cellmate be placed on his enemy list and that a "cell change be conducted to prevent a physical confrontation." (Menard Correctional Center, Illinois)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Schoelch v. Mitchell, 625 F.3d 1041 (8th Cir. 2010). A pretrial detainee who was assaulted two times by a fellow inmate in a county jail brought a civil rights action against a jail guard, and against various supervisory jail officials and county officials. The district court granted summary judgment in favor of the defendants. The detainee appealed. The appeals court affirmed, finding that the detainee did not establish a claim against the guard for deprivation of his due process rights, arising from the first assault, and the guard was not deliberately indifferent to a substantial risk of serious harm to the detainee. The court noted that even assuming that the county jail guard was deliberately indifferent to the pretrial detainee's risk of substantial harm from being assaulted by a fellow inmate by opening the door to the detainee's cell and allowing the other inmate to enter, there was no evidence that the detainee suffered an objectively serious injury as the result of the assault by the fellow inmate, as required to establish a claim against the guard for deprivation of the detainee's due process rights. According to the court, although the fellow inmate had a history of fighting with the detainee and others, the fellow inmate's prior conduct did not put the guard on notice of a substantial risk that he would violently attack the detainee, as it was a surprise attack and the guard was unaware that the inmate had engaged in any prior violent attacks. (St. Louis County Justice Center, Missouri)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Sexton v. Kenton County Detention Center, 702 F.Supp.2d 784 (E.D.Ky. 2010). Two female detainees brought a § 1983 action against a county detention center and officials, alleging deliberate indifference with respect to hiring and supervision of a deputy who sexually assaulted them while they awaited arraignment. The defendants moved for summary judgment. The district court granted the motion. The court held that the detainees failed to establish deliberate indifference with respect to the center's hiring of the deputy. The court noted that none of the deputy's prior misdemeanor offenses, including his driving infractions and domestic assault, demonstrated a propensity to commit rape. The court found that the detainees failed to demonstrate a causal link between the center's alleged policy of not terminating employees with excessive absenteeism and the deputy's conduct. The court noted that "...Absent evidence of prior complaints of sexual assault, the mere fact that a male guard

supervises a female inmate does not lead to the conclusion that the inmate is at a great risk of being sexually assaulted by the guard." According to the court, the detainees failed to establish that the county detention center was deliberately indifferent to their constitutional rights by not effectively monitoring surveillance equipment, and thus they could not recover in their § 1983 action against the center, where there was no evidence that the center had a policy or custom of ineffective surveillance. The detainees argued that only one person monitored the 89 cameras that were used throughout the Detention Center and that they were mainly monitored only for ingress and egress of secured doors. They asserted that the county should have had cameras in the video arraignment room for the inmates' protection. The court noted that state jail regulations do not require constant monitoring of video surveillance cameras or dictate where the cameras are to be placed inside a detention facility. (Kenton County Detention Center, Kentucky)

U.S. District Court
PRISONER SUICIDE

Silvera v. Connecticut Dept. of Corrections, 726 F.Supp.2d 183 (D.Conn. 2010). The representative of a pretrial detainee's estate filed a § 1983 action alleging that state prison officials' decision to house the detainee with a convicted inmate and their failure to provide adequate mental health care caused the detainee's suicide death. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that prison medical staff ignored abundant evidence demonstrating that the pretrial detainee was an acute suicide risk were sufficient to state a claim of deliberate indifference to his serious medical needs, in violation of the Due Process Clause. The court noted that evidence included a judge's instructions to keep him on suicide watch, the detainee's prior medical records, contemporaneous complaints and behavior, and examinations by medical staff, all of whom concluded that the detainee suffered from severe mental health issues. Nonetheless, officials placed him in a cell by himself, rather than in specialized housing, with access to materials with which he could hang himself, failed to check on him regularly, and ignored signs that his mental condition had deteriorated. The court found that a state prison supervisor was not liable under § 1983 for the pretrial detainee's suicide death, even if the supervisor had some training with regards to caring for mentally ill detainees, and his subordinates failed to properly oversee the detainee's activities. The court noted that the detainee was placed in the general prison population based on a mental health professional's recommendation, the supervisor was not aware that the detainee posed an excessive risk of suicide, and subordinates were given proper orders to keep the detainee under constant surveillance and interact with him at frequent, irregular intervals. The court described the change in the detainee's conditions of confinement prior to his suicide. "Inmates housed in the Charlie Unit—apparently unlike those in the specialized housing unit where Mr. Lyle was held from May 11 until May 15—have the ability to turn the cell's lights on and off at will. Additionally, the Charlie Unit has bunk-style beds, which are outfitted with standard-issue sheets and pillow case—both of which would play a role in Mr. Lyle's suicide. Once transferred to the Charlie Unit, Mr. Lyle was given standard DOC clothing, whereas previously he had been given only a 'suicide gown.'" According to the court, the pretrial detainee's right to due process was not violated merely because he was forced to share a cell with a convicted prisoner, absent an allegation that the detainee suffered an injury from being housed with a convicted inmate, or that placement with the convicted inmate was intended to punish the detainee. (Garner Correctional Institute, Connecticut)

U.S. Appeals Court
JUVENILES
SUICIDE

Simmons v. Navajo County, Ariz., 609 F.3d 1011 (9th Cir. 2010). Parents of a pretrial detainee who committed suicide while in custody brought a state-court action against various jail personnel, their supervisors, and their county employer, asserting claims under state tort law, § 1983, and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of the defendants and the parents appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that there was no evidence that a prison nurse knew the pretrial detainee who subsequently committed suicide was in substantial danger of killing himself, as required to demonstrate the prison nurse was deliberately indifferent to such risk in violation of the Fourteenth Amendment. According to the court, although the nurse was aware that the detainee had previously attempted to take his own life, suffered from depression, and was at some risk of making another attempt, at the time detainee killed himself, over a month had elapsed since his suicide attempt, during which time the detainee received counseling, took antidepressants, and by all accounts, was doing better. The court found that prison nurses were not deliberately indifferent, under the Fourteenth Amendment, to the detainee who committed suicide, because they failed to ensure that the detainee had daily evaluations pursuant to the suicide prevention policy, absent evidence that they knew detainee was in a suicidal crisis. According to the court, the prison nurses' failure to retrieve the used gauze the pretrial detainee used to hang himself did not constitute deliberate indifference in violation of the Fourteenth Amendment, absent evidence that the prison nurses were aware the pretrial detainee had accumulated the gauze. The court found that the teenage pretrial detainee waved the prison nurse away on the morning of the day he committed suicide, when the nurse tried to speak with him, because he was absorbed in watching television, did not show that the prison nurse was subjectively aware of the detainee's risk of suicide, so as to support a deliberate indifference claim against the prison nurse under the Fourteenth Amendment. (Navajo County Jail, Arizona)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Smith v. County of Lenawee, 600 F.3d 686 (6th Cir. 2010). A female detainee's estate brought an action against a county, sheriff, on-call physician, police officers, and parole agent, under § 1983 and state law, arising out of the detainee's death while in the county's custody. The district court denied the parole agent's motion for summary judgment on a gross negligence claim. The agent filed interlocutory appeal. The appeals court reversed. The court held that the parole agent's failure to intercede on behalf of the detainee in county custody, upon arriving at the jail to serve the detainee a notice of parole violation charges and determining that the detainee was unable to be transported or served, was not the "proximate cause" of the detainee's death, so as to entitle the agent to governmental immunity from gross negligence liability under Michigan law. The court noted that the detainee was in the custody of county jail officials in the hours leading up to her death, the parole agent worked for the state Department of Corrections, not the county, the detainee had been experiencing delirium tremens (DT) symptoms for close to 48 hours prior to arrival at the jail, a physician had been notified of the detainee's condition and told jail officials to monitor the detainee, the agent was present at the jail for a matter of minutes

only, and county jail officials failed to check the detainee until 40 minutes after the agent left the jail. (Lenawee County Sheriff's Department, and Michigan Department of Corrections)

U.S. District Court
MEDICAL CARE
OFFICER ON PRISONER
ASSAULT
TRANSPORTATION

Tafari v. McCarthy, 714 F.Supp.2d 317 (N.D.N.Y. 2010). A state prisoner brought a § 1983 action against employees of the New York State Department of Correctional Services (DOCS), alleging, among other things, that the employees violated his constitutional rights by subjecting him to excessive force, destroying his personal property, denying him medical care, and subjecting him to inhumane conditions of confinement. The employees moved for summary judgment, and the prisoner moved to file a second amended complaint and to appoint counsel. The court held that a state prison correctional officer's alleged throwing of urine and feces on the prisoner to wake him up, while certainly repulsive, was de minimis use of force, and was not sufficiently severe to be considered repugnant to the conscience of mankind, and thus the officer's conduct did not violate the Eighth Amendment. The court found that officers who were present in the prisoner's cell when another officer allegedly threw urine and feces on the prisoner lacked a reasonable opportunity to stop the alleged violation, given the brief and unexpected nature of the incident, and thus the officers present in the cell could not be held liable for failing to intervene. The court found that even if a correctional officers' captain failed to thoroughly investigate the alleged incident in which one officer threw urine and feces on the prisoner to wake him up, such failure to investigate did not violate the prisoner's due process rights, since the prisoner did not have due process right to a thorough investigation of his grievances. According to the court, one incident in which state correctional officers allegedly interfered with the prisoner's outgoing legal mail did not create a cognizable claim under § 1983 for violation of the prisoner's First and Fourteenth Amendment rights, absent a showing that the prisoner suffered any actual injury, that his access to courts was chilled, or that his ability to legally represent himself was impaired. The court held that there was no evidence that the state prisoner suffered any physical injury as result of an alleged incident in which a correctional officer spit chewing tobacco in his face, as required to maintain an Eighth Amendment claim based on denial of medical care. The court found that, even if a state prisoner's right to file prison grievances was protected by the First Amendment, a restriction limiting the prisoner's filing of grievances to two per week did not violate the prisoner's constitutional rights, since the prisoner was abusing the grievance program. The court noted that the prisoner filed an exorbitant amount of grievances, including 115 in a two-month period, most of which were deemed frivolous.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether state correctional officers used excessive force against the prisoner in the course of his transport to a different facility. The court held that state correctional officers were not entitled to qualified immunity from the prisoner's § 1983 excessive force claim arising from his alleged beating by officers during his transfer to a different facility, where a reasonable juror could have concluded that the officers knew or should have known that their conduct violated the prisoner's Eighth Amendment rights, and it was clearly established that prison official's use of force against an inmate for reasons that did not serve penological purpose violated the inmate's constitutional rights. The inmate allegedly suffered injuries, including bruises and superficial lacerations on his body, which the court found did not constitute a serious medical condition. The court held that state prison officials' alleged retaliatory act of leaving the lights on in the prisoner's cell in a special housing unit (SHU) 24 hours per day did not amount to cruel and unusual treatment, in violation of the Eighth Amendment. According to the court, the prisoner failed to demonstrate a causal connection between his conduct and the adverse action of leaving the lights on 24 hours per day, since the illumination policy applied to all inmates in SHU, not just the prisoner, and constant illumination was related to a legitimate penological interest in protecting both guards and inmates in SHU. (New York State Department of Correctional Services, Eastern New York Correctional Facility)

U.S. District Court
SUICIDE
WRONGFUL DEATH

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
MEDICAL CARE
WRONGFUL DEATH

Thomas v. Cook County Sheriff's Dept., 604 F.3d 293 (7th Cir. 2010). A mother brought a § 1983 and state wrongful death action against a county, sheriff, and various officers and medical technicians at a county jail after her son died from pneumococcal meningitis while being held as a pretrial detainee. The mother asserted a claim of deliberate indifference to medical needs as well as a common-law claim for wrongful death. Following a jury verdict for the mother, the district court, ordered the reduction of the total damage award from \$4,450,000 to \$4,150,000. The defendants appealed. The appeals court affirmed in part and reversed and remanded in part. The court held that the issue of whether county corrections officers were subjectively aware of the pretrial detainee's serious medical condition that culminated in death from pneumococcal meningitis, as required to support the detainee's survivor's § 1983 deliberate indifference action against a county and officers, was for the jury, given the cellmates' and other witnesses' accounts of the detainee's vomiting and exhibiting other signs of serious illness within plain view of officers without any response from them, and given testimony as to the inmates' various complaints to officers regarding his condition. According to the court, issues of whether the county had a custom or practice of failing to timely review jail inmates' medical requests, and a causal link between such

failure and the death of the pretrial detainee from pneumococcal meningitis were for the jury. The court noted that the supervisor and individual medical technicians for the contractor that handled medical services for inmates testified to the practice of not retrieving inmate medical requests on a daily basis, and the detainee's fellow inmates testified to having filed numerous medical requests on the detainee's behalf. The court found that a causal link was not shown between the county sheriff's department's alleged policy of understaffing the county jail and the pretrial detainee's death from pneumococcal meningitis. Although individual deputies employed as corrections officers were shown to have known of and ignored the detainee's medical needs, there was no evidence that such inaction was due to understaffing rather than other causes. The court found that a compensatory damages award of \$4 million was not excessive. The award was not out of line when measured against those in other similar cases, and the award had rational connection with evidence that the detainee was 32 years old, had three children whom he supported, and had died of a treatable illness after numerous fellow inmates had alerted corrections officers about his condition. (Cook County Jail, Illinois)

U.S. District Court
PRISONER SUICIDE

Ulibarri v. City & County of Denver, 742 F.Supp.2d 1192 (D.Colo. 2010). Deaf detainees, and the estate of one detainee who committed suicide, brought a civil rights action challenging their arrests and detentions by the members of city and county's police and sheriff departments. The district court granted the defendants' motions for summary judgment in part and denied in part. The court held that failure to provide a deaf detainee with a sign language interpreter during the intake process did not constitute disability discrimination. The court found that jail deputies were not deliberately indifferent to a deaf detainee's needs. But the court held that summary judgment was precluded by genuine issues of material fact as to whether the deaf detainee had access to the jail's services after he was booked and placed in his housing assignment to the same extent as inmates who could communicate verbally, and whether the detainee could access the jail's services without assistance.

The court held that jail deputies were not deliberately indifferent to needs of a deaf detainee who committed suicide, and because there was no underlying Eighth Amendment violation, supervisor defendants were not liable in either their official or individual capacities for the detainee's suicide, and the municipality was not liable for failure to adequately train and supervise the deputies. The court noted that no evidence indicated that the detainee had been suicidal prior to his incarceration or at the time of his medical screening, but rather, evidence established that the detainee could communicate through writing and otherwise sufficiently to at least alert medical staff that he needed assistance. The court noted that medical staff made regular and frequent visits to the jail. But the court also held that summary judgment was precluded by genuine issues of material fact existed as to whether the sheriff's department breached a duty to the detainee to take reasonable care to prevent the detainee from committing suicide, and whether any such breach proximately caused the detainee's suicide.

The court held that jail officials' late night release of the deaf detainee and the potential harm from being unable to communicate or get herself home did not demonstrate the level of outrageousness required to establish a substantive due process violation under a state-created danger theory. According to the court, the detainee failed to show that officers would have been aware of the risk that, instead of waiting in the facility for public transportation to begin, the detainee would leave and accept a ride from a stranger. The detainee was released at 2:00 a.m. and she was given bus tokens by a deputy sheriff. Her husband had called the facility to say that he was on his way to pick her up, but the message was not relayed to the detainee. There was a waiting area in the lobby of the facility but she did not notice it and attempted to get herself home on her own. (City and County of Denver Police and Sheriff Departments, Pre-arraignment Detention Facility, Denver County Jail, Colorado)

U.S. District Court
USE OF FORCE

Vanderburg v. Harrison County, Miss. ex rel. Bd. of Supervisors, 716 F.Supp.2d 482 (S.D.Miss. 2010). A pre-trial detainee brought an action against a county, officials and officers, alleging civil rights violations under § 1983 and related statutes. A correctional officer moved for summary judgment and for dismissal. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact, regarding whether the correctional officer acted with malice in allegedly injuring the pretrial detainee and whether the force used by the correctional officer was objectively reasonable. (Harrison County Adult Detention Center, Mississippi)

U.S. District Court
JUVENILES
PRISONER SUICIDE

Wells v. Bureau County, 723 F.Supp.2d 1061 (C.D.Ill. 2010). The estate of a 17-year-old pretrial detainee who committed suicide while in custody at a county jail brought an action against the county, county sheriff, and corrections officers, alleging claims pursuant to § 1983, the Americans with Disabilities Act (ADA), and the Rehabilitation Act. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the fact that the pretrial detainee, who committed suicide while in custody at a county jail, did not need a mental health professional when he was booked at the jail after being arrested on charges of illegal consumption of alcohol by a minor and possession of drug paraphernalia, was not dispositive of whether the detainee presented a serious need when he was booked at the jail approximately two weeks later after being arrested on charges of contributing to the delinquency of a minor. The court held that information received by booking officers after pretrial detainee's suicide, including information that the detainee had been kicked out of his father's house, that the detainee was living in a tent, that the detainee and his girlfriend had a suicide pact, and that the detainee had commented to other inmates that if he was going to prison he would "shoot himself," was irrelevant to establishing what was in the officers' minds at time they were alleged to have been deliberately indifferent to the risk that the detainee would commit suicide. According to the court, the corrections officers lacked actual knowledge of a significant likelihood that the detainee would imminently seek to take his own life, or even of facts that would promote the inference of a subjective awareness of such a substantial risk, and thus the officers did not act with deliberate indifference to that risk in violation of due process, despite any alleged negligence in assessing and observing the detainee prior to his suicide.

The court held that summary judgment was precluded by a genuine issue of material fact as to whether the county sheriff's policy that correctional officers not personally observe prisoners during the overnight shift was constitutionally inadequate. From 10 PM to 6:30 AM, detainees are locked in their cells. During the overnight period from 11 PM on June 8, 2007, to 5 AM on June 9, 2007, Officer Keefer did eleven cell checks on

Cellblock 2. While standing in the guard walkway, officers are able to look into two of the four cells and observe detainees in those cells, but officers are unable to see the detainees in the other two cells in the cellblock. During her checks, Officer Keefer personally observed the detainees in two of the cells in Cellblock 2 because she could see them from the guard walkway, but did not observe Wells in his cell because she was unable to see into his cell from the guard walkway. At 6:45 AM, when another officer let the detainees in Cellblock 2 out of their cells for breakfast, he discovered Wells hanging in his cell. (Bureau County Jail, Illinois)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Wereb v. Maui County, 727 F.Supp.2d 898 (D.Hawai'i 2010). Parents of a pretrial detainee, a diabetic who died in custody, brought an action against a county and county police department employees, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's medical needs, and asserting a claim for wrongful death under state law. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The detainee died in a 2-cell police lockup. The court held that county police officers and public safety aids who did not interact with or observe the pretrial detainee not moving in his cell were not subjectively aware of the serious medical need of the detainee, and thus those officers and aids were not deliberately indifferent to that need, in violation of the detainee's due process rights. The court held that summary judgment as to the § 1983 Fourteenth Amendment deliberate indifference claim was precluded by a genuine issue of material fact as to whether county police officers who interacted with the pretrial detainee and/or a county public safety aid who did not see the detainee move around in his cell while she monitored him over video had subjective knowledge of the serious medical need of detainee, precluding summary judgment. The court found that neither county police officers who interacted with the pretrial detainee, nor a county public safety aid who did not see the detainee move around in his cell while she monitored him over video, were entitled to qualified immunity from the § 1983 Fourteenth Amendment deliberate indifference claim brought by the detainee's parents, where at the time of the detainee's death, it was clearly established that officers could not intentionally deny or delay access to medical care. The court held that summary judgment was precluded on the § 1983 municipal liability claim by genuine issues of material fact as to whether the county adequately trained its employees to monitor the medical needs of pretrial detainees, and, if so, as to whether the county's inadequate training of its employees was deliberately different, and as to whether inadequate training "actually caused" the death of the pretrial detainee. (Lahaina Police Station, Maui County, Hawaii)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Whitson v. Stone County Jail, 602 F.3d 920 (8th Cir. 2010). A female prisoner initiated a pro se § 1983 suit, alleging that two officers failed to protect her from a sexual assault by a male prisoner, and that others failed to properly train and supervise the officers responsible for her safety. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by a fact issue as to whether the officers were deliberately indifferent to the safety of the female prisoner who was placed in the back of a dark van for transport with two male inmates and allegedly raped by one of them. (Stone County Jail, Missouri)

U.S. Appeals Court
FAILURE TO PROTECT
USE OF FORCE

Williams v. Jackson, 600 F.3d 1007 (8th Cir. 2010). A former inmate brought Eighth Amendment claims against a prison maintenance supervisor and three correction officers alleging that they willfully and maliciously exposed him to ultraviolet radiation resulting in physical injury. The district court denied the defendants' motion for summary judgment, and they appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that correction officers were not entitled to qualified immunity from the inmate's claims alleging that officers used excessive force and acted with deliberate indifference, in violation of the Eighth Amendment, in removing the shield used to protect cell occupants from exposure to ultraviolet radiation from a germicidal ultraviolet radiation lamp used for the treatment of tuberculosis. The court found that officers acted in retaliation for a comment made by another inmate during a "shake down" of the cell, and that officers ignored demands to replace the shield or deactivate the light, since reasonable officers were on sufficient notice that they may not purposefully expose inmates to potentially harmful radiation in the complete absence of a penological purpose. The court found that the inmate's allegation that the prison's maintenance supervisor received notice that correction officers had removed the protective shield but failed to take timely action to replace the shield alleged was nothing more than simple negligence, and thus was insufficient to state an Eighth Amendment violation. (East Arkansas Regional Unit, Arkansas Department of Corrections)

2011

U.S. Appeals Court
SEXUAL ASSAULT

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
OFFICER ON PRISONER
ASSAULT
PLRA- Prison Litigation
Reform Act

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 inade-

quate 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
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Barrington v. New York, 806 F.Supp.2d 730 (S.D.N.Y. 2011). A prisoner brought a § 1983 action against correctional officers and a state, alleging violation of his constitutional rights as the result of an assault from officers in retaliation for filing grievances about disciplinary actions taken against him. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the state was entitled to sovereign immunity. The court found that the prisoner's § 1983 excessive force suit against correctional officers in their individual capacities did not implicate a rule against double recovery, under New York law, despite the officers' contention that the prisoner had already won an excessive force suit in state court against the officers in their official capacities and now wanted "a second bite at the apple." The court noted that there was no court in which the prisoner could have brought both an excessive force claim under state law against the state and the officers in their official capacities and a § 1983 claim against the officers in individual capacities for which punitive damages were available. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner's filing of a grievance was the motivating factor for the alleged assault by the correctional officers. (Green Haven Correctional Facility, New York)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Bishop v. Hackel, 636 F.3d 757 (6th Cir. 2011). A jail inmate brought a § 1983 claim against deputies, alleging that he suffered sexual abuse by another inmate as the result of their deliberate indifference to his safety needs in violation of the Eighth Amendment. The district court denied the deputies' motion for summary judgment and the deputies appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the deputies' alleged failure to protect the inmate from sexual assault by another inmate was objectively serious. The court held that the deputy who processed the inmate through booking when he entered the jail and completed a referral form that scheduled the inmate for a mental health assessment did not subjectively ignore any risk to the inmate's safety, and thus was not deliberately indifferent to the inmate's safety needs, noting that the deputy had no further contact with the inmate. The court also found that a deputy who ordinarily worked road patrol, and worked in the jail only on the day that the inmate reported that he had been sexually assaulted by another inmate, did not subjectively ignore any risk to the inmate's safety, and thus was not deliberately indifferent to the inmate's safety needs in violation of the Eighth Amendment, where the deputy did not have sufficient contact with the inmate to permit the deputy to perceive his asserted status as a vulnerable inmate, or to observe his alleged altercations with the other inmate. The court held that summary judgment was precluded by genuine issues of material fact as to whether one deputy, who was familiar with the inmate who reported the alleged sexual assault as well as the inmate who allegedly assaulted him, knew of the risk to inmate's safety because of his status as a vulnerable inmate and the other inmate's status as a predatory inmate, and as to whether the deputy knew of the risk to the inmate's safety based on noise generated by the alleged assaults. (Macomb County Jail, Michigan)

U.S. District Court
SUPERVISION
USE OF FORCE

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

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Cash v. County of Erie, 654 F.3d 324 (2nd Cir. 2011). A pretrial detainee filed a § 1983 action against a county, sheriff, and deputy sheriff alleging that the deputy sexually assaulted her. After entry of a jury verdict in the detainee's favor, the district court granted the defendants' motion for judgment notwithstanding the verdict. The parties filed cross-appeals. The appeals court reversed and remanded. The appeals court held that there was sufficient evidence to support the jury's finding that the sheriff was deliberately indifferent to the risk of sexual misconduct, and the jury's determination that the county was subject to municipal liability was not irreconcilably inconsistent with its finding that the sheriff was not negligent. According to the court, trial evidence revealed that the detainee was housed in a female housing unit at the facility, that the deputy, acting alone, escorted some female detainees to the recreation center but ordered the plaintiff to remain behind. When the deputy returned, he grabbed the plaintiff, put his hands over her nose and mouth, forced her into the deputies' bathroom, and raped her. The plaintiff reported the assault the next morning, prompting an investigation that led to the deputy's arrest for first-degree rape. (Erie County Holding Center, New York)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSAULT

Chao v. Ballista, 772 F.Supp.2d 337 (D.Mass. 2011). A former inmate brought an action under § 1983 and the Massachusetts Civil Rights Act (MCRA) against a prison guard and officials, alleging that the guard violated her constitutional rights by sexually exploiting her while she was incarcerated, and that the officials failed to protect her from the guard's repeated sexual battery. 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 repeated sexual encounters between the male prison guard and the female inmate were consensual, as to whether the psychological and physical harm suffered by the inmate was objectively, sufficiently serious, and as to whether the guard was recklessly indifferent to the inmate's health, safety, and her right to be free from sexual harassment and abuse. The court held that summary judgment was precluded by genuine issues of material fact as to whether prison officials were actually aware of the conditions giving rise to the risk of serious harm to the female inmate, namely, the male guard's sexual misconduct, and as to whether the officials disregarded that risk. (South Middlesex Correctional Center, Framingham, Massachusetts)

U.S. District Court
SEXUAL ASSAULT
SUPERVISION

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
PRISONER ON PRISONER
ASSAULT
SUPERVISION

Chess v. U.S., 836 F.Supp.2d 742 (N.D.Ill. 2011). An inmate who suffered personal injuries in an assault by a fellow inmate brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging it failed to properly screen the fellow inmate upon intake and also failed to monitor him. The inmate had suffered second-degree burns when the other inmate threw a cup of scalding water onto his face and then physically assaulted him by hitting him with the cup and punching him. The parties cross-moved for summary judgment. The district court denied the plaintiff's motion, and granted the defendants' motion in part and denied in part. The court held that the government failed to comply with certain directives aimed at monitoring federal prisoners suffering from mental illness, for the purposes of its attempt to avoid liability to the federal inmate who suffered personal injuries in an assault by a fellow inmate under the discretionary function exception to the Federal Tort Claims Act (FTCA) waiver of sovereign immunity. The court found that the inmate's claims relating to a corrections officer's alleged failure to monitor inmates during lockup were not barred by the Federal Tort Claims Act (FTCA) discretionary function exception. According to the court, while there was a genuine issue of material fact as to whether Bureau of Prisons (BOP) officials complied with requirements to review the inmate's central file upon intake and to review the assaulting inmate's mental health on a monthly basis, the assaulted inmate failed to raise the issue for trial as to whether the Bureau's failure to review the assaulting inmate's central file proximately caused his injury. The court found that summary judgment was precluded by a genuine issue of material fact, as to whether, after his second placement, BOP officials knew or reasonably should have known that the inmate should have been segregated from the administrative population. The court also found genuine issues of material fact as to whether a correctional officer's alleged failure to monitor the unit at the time of the attack constituted negligence and proximately caused the attacked inmate's injuries. (Federal Bureau of Prisons, Metropolitan Correctional Center Chicago, Illinois)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Cobige v. City of Chicago, Ill., 651 F.3d 780 (7th Cir. 2011). The estate of a deceased female arrestee brought a § 1983 action against a city and police officers, alleging failure to provide medical care in violation of the Fourth Amendment and the Illinois wrongful death law. After a jury verdict in favor of the estate, the city and officers filed motions for judgment as a matter of law and/or for a new trial. The district court denied the motions. The city and officers appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that evidence presented at trial in the estate's § 1983 action was sufficient to establish causation of the arrestee's death, where evidence from one of the arrestee's cellmates, two deputy sheriffs and a civilian aide at the lockup, permitted a jury to find that she experienced severe abdominal pain throughout her confinement. A professor and head of coronary care at university hospitals testified that the pain led the arrestee to produce more epinephrine, which combined with a pre-existing heart condition caused her death, and uterine tumors found during a post-mortem examination led to his conclusion that the arrestee had suffered serious abdominal pain. The court held that the probative value of evidence of the deceased arrestee's police record, time in prison, and drug addiction outweighed the danger of unfair prejudice, where the evidence bore directly on the appropriate amount of damages and that a new trial on the issue of damages was warranted. (Chicago Police Department Lockup, Illinois)

U.S. Appeals Court
MEDICAL CARE
RELEASE
SUICIDE

Coscia v. Town of Pembroke, Mass., 659 F.3d 37 (1st Cir. 2011). The estate of a detainee who committed suicide after being released from custody brought a § 1983 action against police officers, their supervisors, and a town, alleging that the officers and supervisors were deliberately indifferent to the arrestee's medical needs and that the town failed to train the officers to prevent detainee suicides. The district court denied the individual defendants' motion for judgment on the pleadings and they appealed. The appeals court reversed. The appeals court held that the estate failed to state a claim for deliberate indifference to a substantial risk of serious harm to health under the Fourteenth Amendment. According to the court, the estate failed to allege facts sufficient to demonstrate a causal relationship between the police officers' failure to furnish medical care to the detainee during a seven-hour period of custody and the detainee's act of committing suicide by walking in front of a train 14 hours after his release from custody. The court noted that the detainee had been thinking about suicide at the time he was arrested, the detainee was thinking about suicide at the time he was released from custody, and when the police released the detainee from custody they placed him in no worse position than that in which he would have been had they not acted at all. The court found that in the absence of a risk of harm created or intensified by a state action, there is no due process liability for harm suffered by a prior detainee after release from custody in circumstances that do not effectively extend any state impediment to exercising self-help or to receiving whatever aid by others may normally be available. The twenty-one-year-old detainee had been involved in a one-car accident, he was arrested about eleven o'clock in the morning and brought to the police station. On the way there he said he intended to throw himself in front of a train, and he continued to utter suicide threats at the station house accompanied by self-destructive behavior, to the point of licking an electrical outlet. As a consequence, the police did not lock him in a cell, but placed him in leg restraints and followed an evaluation protocol that showed a high suicide risk. He was not examined by a doctor, but was released on his own recognizance about six o'clock that evening. (Town of Pembroke, Massachusetts)

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE
WRONGFUL DEATH

Estate of Amaro v. City of Oakland, 653 F.3d 808 (9th Cir. 2011). An arrestee's mother filed a § 1983 action against a city and police officers, alleging that arresting officers used excessive force and that prison medical officials were deliberately indifferent to his serious medical condition. The district court denied the city's motion for summary judgment and the city appealed. The appeals court affirmed. The appeals court held that the city could not assert a limitations defense in the § 1983 excessive force action, where the suspect's mother diligently investigated his arrest and death within the limitations period and believed she had a claim against the city, but five different lawyers told her that, in light of the suspect's uncorroborated statements about a police beating and a police sergeant misstatements regarding his death, she did not have sufficient evidence to file a § 1983 claim. The court noted that the city's continued stonewalling in refusing her requests for police department reports prevented her from appreciating the full nature of her claim and dissuaded her from filing a § 1983 claim. (Oakland County Jail, California)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
STAFFING

Estate of Gaither ex rel. Gaither v. District of Columbia, 833 F.Supp.2d 110 (D.D.C. 2011). The personal representative of a detainee's estate brought a § 1983 action against the District of Columbia, department of corrections officials, and corrections officers, seeking damages in connection with the detainee's fatal stabbing while he was incarcerated pending sentencing for felony distribution of cocaine. The corrections officers moved for summary judgment. The district court granted the motion, finding that the officers were entitled to qualified immunity. According to the court, at the time of the detainee's death it was not clearly established that corrections officers were acting with deliberate indifference by exposing inmates, including the detainee, to a substantial threat of inmate-on-inmate attack by understaffing a unit, and thus corrections officers were entitled to qualified immunity. (District of Columbia, Central Detention Facility)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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
PRISONER SUICIDE
MEDICAL CARE

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
PRISONER ON PRISONER
ASSAULT

Holden v. Hirner, 663 F.3d 336 (8th Cir. 2011). A pretrial detainee filed a § 1983 action against officials of a county jail for allegedly violating his Fourteenth Amendment rights under the Due Process Clause by allegedly failing to protect him from an assault by three other inmates, and failing to provide adequate medical treatment for his tooth pain. The district court granted prison officials summary judgment and the detainee appealed. The appeals court affirmed. The court held that there was no evidence that the pretrial detainee was incarcerated under conditions posing a substantial risk of serious harm in the protective custody pod in which the detainee was imprisoned as a sex offender, even though one of the assaulting inmates was involved in another fight four days before the altercation with the detainee. The court noted that the pod was designed to provide greater supervision and security for vulnerable inmates who were more likely to be assaulted, and nothing in the record established that the prior fight involved a sex offender. According to the court, even if the pretrial detainee faced a substantial risk of serious harm from other inmates in the protective custody pod, there was no evidence that officials at the county jail were deliberately indifferent to his safety, where the detainee did not tell officials that he felt threatened by other inmates, and the officials had no knowledge of any specific danger to the detainee in the pod. The court held that the pretrial detainee's tooth pain did not constitute a serious medical need, as required to support the detainee's Fourteenth Amendment claim of deprivation of his due process rights by officials of the county jail. The court noted that a nurse employed by the jail evaluated the detainee's teeth and gums on multiple occasions and never noted bleeding, swelling, infection, or other visible symptoms of tooth pain. The nurse never determined that the detainee's tooth pain required treatment, and the detainee was observed eating without difficulty and later refused to have his tooth extracted. The court found that the detainee's prognosis was not negatively impacted by any delay in treatment. (Marion County Jail, Missouri)

U.S. Appeals Court
USE OF FORCE

Hunter v. County of Sacramento, 652 F.3d 1225 (9th Cir. 2011). Former jail inmates brought a § 1983 action against a county, alleging that they were subjected to excessive force while in custody at the county jail. After a jury verdict in favor of the county, the district court denied the inmates' motion for a new trial and the inmates appealed. The appeals court reversed and remanded, ordering a new trial due to the district court's refusal to submit the inmates' proposed instructions to the jury. The court noted that the inmates' proposed instructions explicitly stating that the county's use of an unconstitutional practice or custom could be proven through evidence that incidents of excessive force were not investigated and their perpetrators were not disciplined. (Sacramento County Main Jail, California)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Jordan v. Fischer, 773 F.Supp.2d 255 (N.D.N.Y. 2011). A state inmate brought a pro se § 1983 action alleging that corrections officials violated his Eighth Amendment rights through the use of excessive force, failure to intervene, and deliberate indifference to his medical needs. The parties cross-moved for summary judgment. The district court granted the motions in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the inmate was subjected to excessive force by correction officers, given the existence of some medical evidence supporting the inmate's claims of an assault, as well as another inmate's statement that he saw the plaintiff inmate being pulled out of line, which was inconsistent with the correction officer's statements. The court found that the alleged "sexual slurs" made to the inmate by a prison nurse did not rise to the level of an Eighth Amendment violation even if the inmate felt insulted or harassed, where the inmate alleged that the nurse, while inspecting the inmate's injuries, asked him how much the inmate could bench press and told him he had nice muscles. (Great Meadow Correctional Facility, New York)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE
WRONGFUL DEATH

Maraj v. Massachusetts, 836 F.Supp.2d 17 (D.Mass. 2011). The mother of a deceased inmate brought an action, as administratrix of the inmate's estate, against the Commonwealth of Massachusetts, a county sheriff's department, a county sheriff, and corrections officers, alleging that the defendants violated the inmate's Fourth and Fourteenth Amendment rights. She also brought common law claims of wrongful death, negligence, and assault and battery. The defendants moved to dismiss for failure to state claim. The district court granted the motion in part and denied in part. The court held that the Commonwealth, in enacting legislation effectuating the assumption of county sheriff's department by the Commonwealth, did not waive sovereign immunity as to § 1983 claims filed against the Commonwealth, the department, and corrections officers in their official capacities after the transfer took effect. The court found that the correction officers who were no longer participating in the

transfer of the inmate at the time inmate first resisted and the officers who took the first responsive measure by “double locking” the inmate’s handcuffs were not subject to liability in their individual capacities as to the § 1983 substantive due process claim brought by inmate’s mother arising from the inmate’s death following the transfer. According to the court, corrections officers who applied physical force to the resisting inmate during the transfer of the inmate, or were present when the inmate was unresponsive and requiring medical attention, were subject to liability, in their individual capacities, as to the § 1983 substantive due process claim brought by the inmate’s mother. The court held that the county sheriff and corrections officers who participated in the transfer of the inmate, who died following the transfer, were immune from negligence and wrongful death claims brought by the inmate’s mother under the Massachusetts Tort Claims Act (MTCA) provision which categorically protected public employees acting within the scope of their employment from liability for “personal injury or death” caused by their individual negligence. But the court found that the mother properly alleged that county corrections officers’ contact with the inmate amounted to excessive force, and that a supervisor instructed the use of excessive force, as required to state a claim for assault and battery, under Massachusetts law, against the officers. (South Bay House of Correction, Suffolk County, Massachusetts)

U.S. Appeals Court
RELEASE

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 of Chicago 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 protection orders 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, Ill.)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Newbrough v. Piedmont Regional Jail Authority, 822 F.Supp.2d 558 (E.D.Va. 2011). The administrator of an immigration detainee’s estate brought an action against the federal government, a regional jail authority and various of its employees, and several agents of the United States Immigration and Customs Enforcement (ICE), alleging § 1983 claims in relation to medical treatment received by detainee while in jail, and a claim for wrongful death. The defendants moved to dismiss and the plaintiff moved for a stay. The court held that the stricter deliberate indifference standard, rather than the professional judgment standard, applied to the § 1983 denial-of-medical-care claims brought by the administrator, where immigration detention was more similar to pretrial detention rather than the involuntary commitment of psychiatric patients, in that immigration detention served to secure the detainee’s appearance at future proceedings and to protect the community, and pre-removal detention was generally limited in duration. The court held that the allegations of the administrator were sufficient to allege that a prison nurse deliberately denied, delayed, or interfered with the detainee’s medical care with knowledge of his serious condition, as required to state a § 1983 denial-of-medical-care claim under Fourteenth Amendment’s Due Process Clause. The administrator alleged that the nurse visited the detainee while he was held in isolation in a medical segregation unit with an apparent inability to walk or stand, and yet withheld medication because the detainee was unwilling to stand up and walk to the door to receive that medication. The court noted that the nurse acknowledged that not giving the detainee his medication could cause severe problems. The court found that the nurse did not deny, delay, or intentionally interfere with the immigration detainee’s medical treatment, where the nurse documented her observations regarding the detainee’s acute back pain, sleeplessness, and unresponsiveness, and then related those observations to superior prison officials, including a prison doctor. According to the court, allegations of the administrator were sufficient to allege that a prison doctor deliberately denied, delayed, or interfered with the detainee’s medical care with knowledge of his serious condition, where the administrator alleged that the doctor received multiple reports from his subordinates regarding the detainee’s back pain, his inability to stand, and elevated vital signs and yet failed to act or personally assess the detainee’s condition, to provide more than perfunctory treatment, or to follow up on prescribed courses of treatment.

The court found that the administrator sufficiently alleged that the regional jail authority and its superintendent failed to adequately train jail staff, as required to state a § 1983 policy-or-custom claim in relation to the detainee’s medical care under the Fourteenth Amendment’s Due Process Clause. The administrator alleged that prison officers regularly refused to refer requests for medical attention unless a request was in writing, regardless of the urgency of a detainee’s need, that prison staff either failed to recognize symptoms of grave illness or ignored them, and that, even in the face of the detainee’s potentially fatal infection, staff provided no more than an over-the-counter pain reliever. The court found that the administrator’s allegations were sufficient to allege that the jail’s superintendent, even if newly hired, was aware of the shortcomings in his facility’s medical care, as required to state a § 1983 supervisory liability claim, where the administrator alleged that numerous public investigations and media coverage reported the poor quality of the jail’s health services and the superintendent failed to act to improve those services. (Piedmont Regional Jail Authority, Virginia, and U.S. Immigration and Customs Enforcement Agency)

U.S. District Court
MEDICAL CARE

O’Neil v. Texas Dept. of Criminal Justice, 804 F.Supp.2d 532 (N.D.Tex. 2011). The next friend to a deceased prisoner’s minor daughter who died of an asthma attack while confined brought a § 1983 action against the Texas Department of Criminal Justice (TDCJ), a prison doctor, the company that provided health care services at the prison, and others, alleging violations of the Eighth Amendment, the Americans with Disabilities Act (ADA), and the Rehabilitation Act (RA). The defendants moved for summary judgment. The district court granted the

motions in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a picket officer, in failing to respond to the emergency call button of the prisoner who was suffering from an asthma attack and in refusing to respond to the cellmate's verbal calls to help the prisoner during an asthma attack, knew of a substantial risk of serious harm to the prisoner and failed to act with deliberate indifference to that harm. The court found that the officer was not entitled to qualified immunity.

The court held that summary judgment on claims alleging violations of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA), Rehabilitation Act of 1973, was precluded by a genuine issue of material fact as to whether the Texas Department of Criminal Justice (TDCJ), in failing to put the prisoner who suffered from asthma on job restriction from temperature or humidity extremes, failing to allow the prisoner access to his medication on the day he died as the result of an asthma attack, and failing to provide the prisoner with periodic physician follow-up appointments, failed to accommodate the prisoner's disability. The court held that summary judgment on alleged violations of Americans with Disabilities Act (ADA) and Rehabilitation Act (RA) was precluded by a genuine issue of material fact as to whether the company that provided health care services at the prison, in failing to respond to emergency calls for help for the prisoner who suffered from asthma and failing to provide the prisoner with prompt medical attention on the day he died as the result of an asthma attack, failed to accommodate the prisoner's disability. (Jordan Unit, Texas Department of Criminal Justice)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Ortiz v. City of Chicago, 656 F.3d 523 (7th Cir. 2011). A female arrestee's estate brought a civil rights action against a city and a number of its police officers, alleging claims arising out of the arrestee's denial of medical care and death during detention. The district court barred the proposed testimony of the estate's medical expert, and granted summary judgment in favor of the defendants. The estate appealed. The appeals court affirmed in part and reversed in part. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether it was objectively unreasonable for police officers to take no action to seek medical care for the arrestee, and as to whether the arrestee would not have died or experienced pain and suffering prior to her death had the police officers taken her to a hospital. The court held that remand was required for the district court to determine whether the medical expert's testimony that, assuming the arrestee died of a heroin overdose, she would have suffered less if she had been taken to the hospital, would help a jury understand whether the police officers' failure to take the arrestee to the hospital exacerbated her injury. According to the court, the police officers were not entitled to qualified immunity where it was clearly established at the time of arrestee's death that the Fourth Amendment protected a person's rights until she had had a probable cause hearing, and that providing no medical care in the face of a serious health risk was deliberate indifference. (Chicago Police Department 23rd District Lockup, Illinois)

U.S. District Court
SEXUAL ASSAULT

Pauls v. Green, 816 F.Supp.2d 961 (D.Idaho 2011). A female pretrial detainee brought an action against a county, county officials, and a jail guard, alleging that she was coerced into having inappropriate sexual contact with the guard. The defendants moved to dismiss and for summary judgment, and the plaintiff moved to compel discovery and for sanctions. The district court granted the motions, in part. The court held that the detainee was not required to file grievances after being transferred to a state prison before filing her § 1983 action, in order to satisfy the administrative exhaustion requirement under the Prison Litigation Reform Act (PLRA). The court noted that the county jail grievance procedures were not available to detainees after they transferred, and the county did not offer any assistance to the detainee after learning of the alleged assaults.

The court found that neither the county nor the county sheriff was deliberately indifferent in failing to train or supervise county jail guards to not sexually assault jail detainees, and thus, the female detainee could not demonstrate that the county or sheriff was liable under § 1983. According to the court, the guards did not need specific training to know that they should refrain from sexually assaulting detainees, and there was no showing that the general training program for guards was deficient or that there was a pattern of prior abuses at county jail. The court held that the summary judgment affidavit of the pretrial detainee's expert, containing the opinion that county officials exhibited deliberate indifference to the rights and safety of jail detainees in training or supervising jail staff, and that sexual improprieties on the part of staff were easily accomplished and rarely punished, was insufficient to avoid summary judgment, where the affidavit was conclusory, and without factual predicate. The court found that the detainee was entitled to the sanction of an adverse jury instruction against the county for the destruction of recordings of interviews conducted by police during the investigation of the county jail guard's contact with the detainee. (Adams County Jail, Idaho)

U.S. District Court
JUVENILES
OFFICER ON PRISONER
ASSAULT

Plair v. City of New York, 789 F.Supp.2d 459 (S.D.N.Y. 2011). A pre-trial detainee at an adolescent jail brought an action against a city, city officials, and corrections officers, asserting claims under § 1983 and state law arising from an incident in which an officer allegedly punched him in the face. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee failed to state excessive force claims against supervisory officials and a § 1983 claim against the city. The court found that correctional officers and supervisors did not have immunity under New York law from state law claims and the city did not have immunity under New York law from state law claims brought on the respondeat superior basis. The court held that the determination of whether the pretrial detainee's claim against the city for its negligent hiring, training, and retention of officers and supervisors allegedly involved in the detainee's beating could not be resolved at the motion to dismiss phase because of factual issues as to whether the actions of these officers and supervisors were undertaken in the scope of their employment. (Robert N. Davoren Center, Rikers Island, New York City)

U.S. Appeals Court
TRANSPORTATION

Reynolds v. Dormire, 636 F.3d 976 (8th Cir. 2011). A state prisoner filed a pro se § 1983 action against a prison warden and correctional officers (COs), asserting Eighth Amendment claims arising from refusal to remove the prisoner's restraints on a day-long journey to a medical appointment, and from his alleged injuries from falling five feet into a sally port pit designed to facilitate visual inspections of vehicle undercarriages at an entryway into the prison. The district court dismissed the complaint for failure to state a claim. The prisoner appealed. The

appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the prisoner's complaint was devoid of any allegation suggesting that correctional officers acted with deliberate indifference to the prisoner's safety in restraining him throughout the day, as required to support an Eighth Amendment claim in his § 1983 action, since the complaint merely alleged that the officers refused to remove the prisoner's restraints. But the court held that the prisoner's complaint sufficiently alleged claims of deliberate indifference to his safety in violation of the Eighth Amendment by two correctional officers, but not the other three officers who were simply on duty in the vicinity of the prisoner's accident in which he fell five feet into a sally port pit. According to the court, the complaint sufficiently pleaded that the two officers were aware of a substantial risk to the prisoner's safety but recklessly disregarded that risk. The prisoner alleged that one officer parked the prison van about three feet from edge of the pit, that the prisoner was obliged to back out of the van, using a stool to descend from the vehicle, with his legs shackled and his arms secured by a black box restraint, that the second officer supervising the prisoner's exit started backing away rather than assisting the prisoner, and that officers knew about the hazard because another prisoner had fallen into the same pit on the same day. (Northeast Correctional Center, Missouri)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

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

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

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
PRISONER SUICIDE
MEDICAL CARE

Smith v. Atkins, 777 F.Supp.2d 955 (E.D.N.C. 2011). The mother of a schizophrenic inmate who committed suicide at a jail and the mother of the inmate's children brought a § 1983 action in state court against a county deputy sheriff, jail officials, a medical contractor, and a nurse employed by the contractor, alleging that the defendants violated the inmate's Eighth Amendment rights in failing to provide adequate medical care. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motions. The court held that the deputy sheriff who happened to be at the jail delivering a prisoner when the inmate, who had been diagnosed with schizophrenia, committed suicide, did not know that the inmate was at a substantial risk of committing suicide or intentionally disregarded such risk. The court found that the deputy was not liable under § 1983 where the deputy did not know the inmate or anything about him, or have any responsibilities associated with the inmate's custody. The court also found that jail officials were not deliberately indifferent towards the schizophrenic inmate who was awaiting transfer to a state prison, as would violate the inmate's Eighth Amendment rights, because there was no indication that the officials subjectively knew that the inmate was at a substantial risk of committing suicide and intentionally disregarded that risk. According to the court, simply because the jail inmate, who was diagnosed with schizophrenia, had previously been on a suicide watch at the jail did not put jail officials on notice that he was suicidal during his subsequent incarceration two years later. The court held that jail officials' mere failure to comply with a state standard and a jail policy requiring a four-time per hour check on any prisoner who had ever been on a suicide watch did not violate the Eighth Amendment rights of the inmate. The court found that the mother of the inmate failed to show a direct causal link between a specific deficiency in training and an alleged Eighth Amendment violation, as required to sustain the mother's § 1983 Eighth Amendment claim against jail officials based on their alleged failure to train jail employees. (Bertie-Martin Regional Jail, North Carolina)

U.S. Appeals Court
FAILURE TO PROTECT
PRISONER ON PRISONER
ASSAULT
SUPERVISION

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
OFFICER ON PRISONER
ASSAULT
THREATS

Tuckel v. Grover, 660 F.3d 1249 (10th Cir. 2011). A state prisoner filed a § 1983 lawsuit against two prison officials, alleging that he was beaten in retaliation for submitting a complaint through the prison grievance system. The district court granted summary judgment in favor of the defendants, and the prisoner appealed. The appeals court vacated and remanded. The appeals court held that intimidation or threats by prison officials could render an administrative remedy unavailable under the Prison Litigation Reform Act's (PLRA) exhaustion provision. (Arkansas Valley Correction Facility, Colorado)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Wereb v. Maui County, 830 F.Supp.2d 1026 (D.Hawai'i 2011). The parents of a diabetic pretrial detainee who died in custody brought an action against a county and county police department employees, alleging under § 1983 that the defendants were deliberately indifferent to the detainee's medical needs, and asserting a claim for wrongful death under state law. The district granted summary judgment, in part, in favor of the defendants. The county moved for reconsideration. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by fact issues on the claim that the county failed to train jail employees to monitor detainees' serious medical needs. The court found that the county and its police department were not liable for their alleged failure to train employees on the risks and symptoms of alcohol withdrawal. According to the court, assuming that the detainee died from alcohol withdrawal, no other prisoner in the county jail had suffered injury from alcohol withdrawal for more than 17 years before the detainee's death, so that such a failure to train did not constitute deliberate indifference. (Lahaina, Maui, Police Station, Hawai'i)

2012

U.S. District Court
OFFICER ON PRISONER
ASSAULT
SEXUAL ASSUALT

Ard v. Rushing, 911 F.Supp.2d 425 (S.D.Miss. 2012). A female inmate brought an action against a sheriff and a deputy asserting claims under § 1983 and § 1985 for violation of the Fourth, Fifth and Eighth Amendments, and also alleging a state law claim for negligence, relating to an incident in which she was sexually assaulted by the deputy while she was incarcerated. The sheriff moved for summary judgment. The district court granted the motion. The court held that the sheriff was not deliberately indifferent to a substantial risk of harm to the female jail inmate as would have violated the Eighth Amendment, where the sheriff had established safeguards to ensure the safety of female prisoners, including a female-only, camera-monitored area in which female inmates were housed, a policy that male jailers could not enter the female-only area without a female jailer, and a policy that a female jailer was to cover each shift. The court noted that past allegations that the deputy had engaged in unwanted sexual contact with female inmates had been investigated and found not to be substantiated. The court found that the inmate failed to show that the sheriff had knowledge of the deputy's disregard of the sheriff's policy to ensure the safety of female prisoners, which included a requirement that male jailers could not enter the female-only area without a female jailer, or to show that the sheriff was deliberately indifferent to the need for more or different training, as required to establish an Eighth Amendment failure to train/supervise claim. (Lincoln County Jail, Mississippi)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Bektic-Marrero v. Goldberg, 850 F.Supp.2d 418 (S.D.N.Y. 2012). The wife of an inmate who died of cancer-related causes while in the custody of a county department of correction (DOC) brought an action against the county, DOC officials, and entities that contracted with the county to provide medical care and treatment to DOC inmates and employees of those entities. The wife alleged under § 1983 that the inmate received inadequate medical care, and asserted related state-law claims for wrongful death and medical malpractice. The defendants moved to dismiss for failure to state a claim and/or for summary judgment. The district court granted summary judgment for the defendants in part, and denied in part. The court held that the physicians who were under contract with the county to provide medical services to inmates at the county jail on a part-time basis acted under the color of state law, within the meaning of § 1983, when they treated the inmate, and thus the physicians were subject to liability under § 1983. The court held that the allegations that the health care coordinator for the DOC denied or delayed responding to the wife's request for the inmate's medical records, which she hoped to use to have the inmate's parole restored and to seek a second medical opinion, and that the coordinator expressly denied the wife's request to provide the inmate with a liquid dietary supplement which wife would supply at her own cost, sufficiently pled the coordinator's personal involvement in the alleged deprivation of necessary medical care to the inmate, so as to subject the coordinator to liability under § 1983. The court found that the United States Department of Justice (DOJ) report which concluded that the provision of medical care to inmates by the county department of correction (DOC) was constitutionally deficient in several respects sufficiently alleged that the county's "custom" of providing inadequate care to inmates was the cause of Eighth Amendment violations sustained by the inmate. (Westchester County Department of Correction, New York)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

Bistrrian v. Levi, 696 F.3d 352 (3rd Cir. 2012). A federal inmate brought a civil rights action against prison officials and employees, alleging, among other things, that the defendants failed to protect him from inmate violence, and that the defendants placed him in a special housing unit (SHU) in retaliation for exercising his First Amendment rights. The inmate alleged that prison investigators used him to intercept notes being passed among other inmates, and then failed to protect him after they fouled up the operation and the inmates discovered his involvement. When the target inmates threatened to retaliate, the inmate contended he repeatedly begged the officials responsible for help, but no one took any preventive measures. Later, one of the inmates against whom inmate had cooperated, along with two others, beat him while they were together in a locked recreation pen. A few months later, an inmate wielding a razor-blade type weapon also attacked the inmate in the recreation pen.

The district court denied the defendants' motion to dismiss. The defendants appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that: (1) the officials' decision to keep the inmate, who had acted as an informant, in SHU after his cooperation with the officials was not unreasonable; (2) the officials were deliberately indifferent to the inmate's safety when they placed him in a recreation yard with prisoners who were aware of his complicity with officials by informing on them; (3) the officials were not deliberately indifferent to a risk of harm when they placed the inmate in the yard with a prisoner who had a history of violent assaults against other inmates; (4) the inmate stated a failure-to-protect claim with respect to the officer's failure to intervene in the assault, where he intervened in another prisoner's assault on the inmate in the special housing unit's (SHU) recreation yard "only after several minutes of continued pummeling;" and (6) the inmate stated a substantive due process claim. The court noted that the federal inmate, who was either not yet convicted, or convicted but not yet sentenced, when he was attacked by other inmates in the prison's recreation yard, had a clearly established due process right to have prison officials protect him from inmate violence. (Federal Detention Center, Philadelphia, Pennsylvania)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Bruner-McMahon v. Hinshaw, 846 F.Supp.2d 1177 (D.Kan. 2012). The administrator of the estate and the children of a deceased inmate brought a § 1983 action against a prison medical contractor, its employees, county officials, and prison employees, alleging violations of the Eighth Amendment. The court held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy knew that the inmate faced a risk of a serious medical condition and chose to ignore it. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether a deputy who found the inmate lying on the floor in his cell but did not contact the clinic was deliberately indifferent to the risk of serious medical need. The court found that a deputy who helped escort the inmate back to his cell was not deliberately indifferent to the inmate's serious medical need, as would violate the Eighth Amendment after the inmate died a couple days later, even though the deputy saw the inmate acting strangely and moving slowly, where the deputy believed the inmate had a mental health condition and did not need emergency care from a medical provider, and the deputy believed the deputy in charge at that time would address the matter, and the deputy had no other contact with the inmate. According to the court, a county custom, practice, or policy did not cause alleged constitutional violations by jail deputies in not getting medical care for inmate, as required for supervisory liability for the sheriff in his official capacity. The court noted that policy required that inmates receive necessary medical care without delay, deputies were expected to use common sense when responding to an inmate request or a known need, if an inmate appeared ill or a deputy otherwise recognized the need for medical attention the deputy was supposed to advise the inmate to place his name on sick call, contact a supervisor, or call the medical facility, and, in the event of a medical emergency, the deputy could call an emergency radio code alerting a medical facility to respond immediately. (Sedgwick County Adult Detention Facility, Kansas)

U.S. District Court
WRONGFUL DEATH
SUPERVISION

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
MEDICAL CARE

Coffey v. U.S., 870 F.Supp.2d 1202 (D.N.M. 2012). The mother of a deceased inmate brought an action against the government under the Federal Tort Claims Act (FTCA), alleging, among other things, that Bureau of Indian Affairs (BIA) was negligent in failing to medically screen the inmate prior to his transfer to a different facility. The government moved to dismiss for lack of subject matter jurisdiction and for failure to state claim or, in the alternative, for summary judgment. The district court denied the motion for summary judgment. The court held that summary judgment was precluded by genuine issues of material fact: (1) as to whether the Bureau of Indian Affairs (BIA), which transferred custody of the inmate with a heart condition to a county jail, where he died, engaged in conduct that breached its duty to conduct some screening of the inmate's condition; (2) as to whether BIA's conduct caused the inmate's death; (3) as to whether BIA engaged in conduct that breached its duty to take some steps to ensure that the jail would learn of his condition; (4) as to whether BIA's conduct caused the inmate's death; (5) as to whether BIA engaged in conduct that breached its duty to take some steps to ensure that the inmate's medical needs were addressed when it chose to transfer him; and (6) as to whether BIA engaged in conduct that breached its duty to act reasonably in terms of sending the inmate to the jail. (Reno Sparks Indian Colony, Nevada, and Washoe County Jail, Nevada)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Coffey v. U.S., 906 F.Supp.2d 1114 (D.N.M. 2012). The mother of a decedent, a Native American who died in a county correctional institution, brought actions on behalf of her son and his children against the government, alleging wrongful death and negligence claims arising from his treatment while in the institution. After a two-day bench trial, the district court found that: (1) the notice provided to the Bureau of Indian Affairs (BIA) in the mother's administrative claim was sufficient, thereby providing jurisdiction over the mother's wrongful death and negligence claims; (2) the BIA's decision whether to screen and transfer the inmate were not choices susceptible to policy analysis, and thus, the discretionary-function exception to the Federal Tort Claims Act (FTCA) did not preclude jurisdiction; (3) the mother's negligent screening claims were precluded; (4) the mother's negligent

transfer claims were precluded; and (5) the mother's wrongful death claims, arising under FTCA, were precluded. The mother had filed a standard two-page form and submitted it to Indian Health Services and the Department of Health and Human Services (HHS), claiming that her son was denied medication, and that he was transferred by BIA to another correctional facility. The district court concluded that the United States Government was not liable for the detainee's death. (U.S. Department of the Interior-Bureau of Indian Affairs, McKinley County Detention Center, Nevada)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Covarrubias v. Wallace, 907 F.Supp.2d 808 (E.D.Tex. 2012). A state prisoner brought a pro se § 1983 action against prison guards and officials complaining of alleged violations of his constitutional rights, in connection with an alleged assault by guards and a subsequent disciplinary hearing. The district court held that: (1) picket officers could not be held liable under a supervisory liability theory for failing to intervene when the prisoner was subjected to pepper spray, where even if they had authority to intervene, they did not have a realistic opportunity to intervene; (2) the punishments imposed on the prisoner for assaulting a guard did not violate any due process liberty interest; (3) denial of the prisoner's grievance did not violate any due process liberty interest; and (4) the prisoner failed to state an Eighth Amendment claim for disregarding an excessive risk to his health or safety. But the court found that the prisoner's allegations, that corrections officers used excessive force against him in retaliation for requesting a supervisor and for attempts to informally resolve a complaint, stated § 1983 claims against the officers. The prisoner alleged that as he was being restrained, one officer fired a two- to three-second burst of pepper spray into his right eye, and the officers subsequently tackled him, using their elbows, knees, arms, and hands on his back, legs, arms, and face as they piled on him and pressed his face into the concrete. (Texas Department of Criminal Justice, Correctional Institutions Division, Beto Unit)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Currie v. Cundiff, 870 F.Supp.2d 581 (S.D.Ill. 2012). The administrator of the estate of a deceased detainee brought an action against a county, jail officials, and health care providers, alleging various claims, including claims pursuant to § 1983 and the Illinois Wrongful Death Act, as well as for punitive damages. The court held that allegations by the administrator of the estate of the deceased arrestee, that jail officials and health care providers acted with deliberate indifference in dealing with his diabetes while he was in custody, were sufficient to plead that they acted with reckless or callous disregard to federally protected rights, as required to seek punitive damages in the § 1983 proceedings alleging violations of the Fourth Amendment. The detainee died as a result of diabetic ketoacidosis while confined in the county jail. (Williamson County Jail, Illinois)

U.S. District Court
TRANSPORTATION
WRONGFUL DEATH

Curtis v. TransCor America, LLC, 877 F.Supp.2d 578 (N.D.Ill. 2012). A prisoner's son brought a wrongful death action against a prisoner transport company, alleging that the company was liable for damages resulting from the death of the prisoner while in the company's custody. The district court held that it was necessary and proper for the court to resolve a narrow question of fact prior to trial for choice of law purposes, that Illinois law, rather than the law of Indiana, governed the issue of compensatory damages, and that the prisoner's son would be allowed to pursue punitive damages. The prisoner suffered a stroke that was allegedly caused, at least in part, by excessive temperatures in the prisoner compartment of the transport vehicle. According to the court, even though the complaint for wrongful death of the prisoner during a ride in a bus with a broken air conditioning unit had not requested punitive damages, the plaintiff could seek such damages against the prisoner transport company at trial. The court noted that although the company faced increased liability exposure, allegations suggesting that the employees ignored indications that the prisoner was in distress went beyond mere negligence. (TransCor America, LLC, Transport from Leavenworth, Kansas to Federal Correctional Complex in Terre Haute, Indiana)

U.S. District Court
PROTECTION FROM
HARM
SUICIDE

Disability Law Center v. Massachusetts Dept. of Correction, 960 F.Supp.2d 271 (D.Mass. 2012). A nonprofit organization, which represented mentally ill prisoners, brought an action against a state's Department of Correction, alleging that the Department and its officials violated the federal constitutional rights of prisoners by subjecting them to disciplinary and other forms of segregation for prolonged periods of time. After extensive negotiations, the parties jointly moved for approval of a settlement agreement. The district court granted the motion, finding the agreement to be fair, reasonable, and adequate. The court noted that the agreement addressed the fundamental issue of prison suicides by providing a process for minimizing the possibility that inmates with serious mental illnesses would be confined in segregation, and for reviewing their mental health while in segregation. The court held that the agreement did not order any "prospective relief," or in fact any "relief" at all, thereby precluding the applicability of the requirement of the Prison Litigation Reform Act (PLRA), that prospective relief not extend further than necessary to remedy violation of a federal right. (Massachusetts Department of Correction)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Ebrahime v. Dart, 899 F.Supp.2d 777 (N.D.Ill. 2012). A pretrial detainee at a county jail brought a § 1983 action against a county sheriff and jail officials arising from an attack by a fellow detainee. The district court granted the defendants' motion for summary judgment. The court held that county jail officials were not deliberately indifferent in preventing the attack on the detainee, who reported theft of commissary items from his table, by the accused fellow inmate. The court noted that the detainee did not himself feel there was threat, and the fellow inmate did not know that the detainee had reported him, but rather, he only knew that the detainee's associates had reported their items stolen from detainee's table. The court found that the county jail officials were not deliberately indifferent in failing to intervene in the attack on the pretrial detainee, even though the corrections officer who was with the detainee when the attack began did not respond on his own, he called for backup which arrived, in force, within a minute or two. (Cook County Jail, Illinois)

U.S. Appeals Court
MEDICAL CARE
PRISONER SUICIDE
PROTECTION FROM
HARM
SUPERVISION

Estate of Miller, ex rel. Bertram v. Tobiasz, 680 F.3d 984 (7th Cir. 2012). The minor siblings of an inmate who committed suicide brought a § 1983 action against correctional facility staff members, alleging deliberate indifference to the inmate's serious medical condition involving a long history of suicide attempts, self-harm, and mental illness. The district court granted qualified immunity to the management-level defendants and others, but denied qualified immunity to an intake nurse, psychology associate, and prison guards. The defendants who were denied qualified immunity appealed. The appeals court affirmed. The appeals court held that the inmate's siblings adequately alleged that the intake nurse and a psychology associate were subjectively aware that the inmate was a suicide risk, as required to state a claim alleging deliberate indifference to the inmate's serious medical condition. The court found that the inmate's siblings adequately alleged that prison guards were subjectively aware that the inmate was a suicide risk. According to the court, the siblings adequately alleged that the intake nurse and psychology associate failed to take reasonable steps to prevent the harm from the inmate's suicidal tendencies, and that prison guards failed to take reasonable steps to prevent the harm from the inmate's suicidal tendencies. The court held that the intake nurse, psychology associate, and prison guards were not entitled to qualified immunity. The court noted that the guards allegedly knew or should have known of the inmate's mental illness and suicide attempts because he was adjudicated mentally ill, he had court-ordered medications he refused to take the night he died, and he had a well-documented history of suicidal behavior. The inmate was housed in a unit where inmates in need of greater supervision were placed. The guards allegedly failed to call for medical attention despite finding the inmate with no pulse and not breathing on the floor of his cell with a white cloth wrapped around his neck, and waited to assemble an entry team and then applied restraints to the inmate before removing the ligature from around his neck. (Columbia Correctional Institute, Wisconsin)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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

U.S. District Court
MEDICAL CARE
SUICIDE
SUICIDE ATTEMPT
WRONGFUL DEATH

Ferencz v. Medlock, 905 F.Supp.2d 656 (W.D.Pa. 2012). A mother, as administrator for her son's estate, brought deliberate indifference claims under a wrongful death statute against prison employees, and the prison's medical services provider, following the death of her son when he was a pretrial detainee in a county prison. The employees and provider moved to dismiss. The district court granted the motion in part and denied in part. The district court held that under Pennsylvania law, the mother lacked standing to bring wrongful death and survival actions in her individual capacity against several prison employees for her son's death while he was in prison, where the wrongful death and survival statutes only permitted recovery by a personal representative, such as a mother in her action as administratrix of her son's estate, or as a person entitled to recover damages as a trustee ad litem. The court found that the mother's claims that a prison's medical services provider had a policy, practice, or custom that resulted in her son's death were sufficient to overcome the provider's motion to dismiss the mother's § 1983 action for the death of her son while he was in prison.

Upon admission to the facility, the detainee had been evaluated and scored a 12 on a scale, which was to have triggered classification as suicidal (a score of 8 or more). The Classification Committee subsequently did not classify the detainee as suicidal as they were required to do under the jail classification policy, and no member of the Committee communicated to medical contractor staff or correctional officers responsible for monitoring the detainee that he was suicidal and going through drug withdrawal. At the time, the jail was equipped with an operational and working video surveillance system and there was a video camera in the detainee's cell. The video surveillance of the cell was broadcast on four different television monitors throughout the jail, all of which were working and manned by officers. Additionally, the work station thhhatt was located around the corner from the cell, approximately 20 feet away, was equipped with one of the four television monitors. The monitor was situated on the wall above the desk at the work station, such that it would be directly in front of the officer manning the station if he was sitting facing his desk.

The detainee attempted suicide by trying to hang himself with his bed sheet from the top of the cell bars, which took several minutes and was unsuccessful. After the attempt, however, the detainee left the bed sheet hanging from the top of his cell bars and started to pace in his cell in visible mental distress. This suicide attempt, as well as the hanging bedsheets were viewable from the nearby work station video surveillance monitor as well as the other three monitors throughout the jail. A few minutes later the detainee attempted to commit suicide a second time by hanging himself with his bed sheet from the top of his cell bars. This suicide attempt took several minutes, was unsuccessful, and was viewable from the work station video surveillance monitor as well as the other three monitors throughout the jail. A few minutes later, the detainee attempted to commit suicide a third time by hanging himself with his bed sheet. This time, he hung himself from his bed sheet for over twenty minutes, without being noticed by any of the four officers who were manning the four video surveillance monitors. In fact, one officer admitted he was asleep at his work station at the time. By the time

another officer noticed the hanging, nearly 30 minutes had passed. The detainee was cut down and transported to a local hospital where he was subsequently pronounced dead due to asphyxiation by hanging. (Fayette County Prison, Pennsylvania, and PrimeCare Medical, Inc.)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Gabriel v. County of Herkimer, 889 F.Supp.2d 374 (N.D.N.Y. 2012). The administrator of a pretrial detainee's estate brought a § 1983 action against a county, jail officials, and jail medical personnel, alleging deliberate indifference to a serious medical need, due process violations, and a state claim for wrongful death. The county brought a third-party complaint against a hospital demanding indemnity. The defendants moved for summary judgment and the hospital moved to dismiss the third-party complaint. The district court held that severance of the third party complaint involving the hospital was warranted, where a separate trial regarding indemnity, following a verdict on liability, would be both economical and convenient. The court found that summary judgment was precluded by material fact issues as to: (1) whether a nurse practitioner was aware of the detainee's history of depression, anxiety, tachycardia, angina, mitral valve prolapsed, degenerative back disease, and sciatic nerve, but consciously disregarded the risk of harm to him; (2) whether the detainee had a serious medical condition; and (3) whether a policy or custom of the county led to the denial of medical treatment for the detainee. According to the court, there was no evidence that a corrections officer disregarded an excessive risk to the safety of the pretrial detainee, noting that when the officer witnessed the detainee fall, he assisted him and promptly contacted the medical unit. According to the court, a lieutenant was not a policymaker, as required to support a § 1983 claim by the estate, where the lieutenant was responsible for jail security and had no involvement in the jail's medical policies and procedures. (Herkimer County Jail, New York)

U.S. District Court
SUICIDE

Glover v. Gartman, 899 F.Supp.2d 1115 (D.N.M. 2012). The personal representative of the estate of a pretrial detainee who committed suicide while in custody brought an action against a warden of a county detention center and corrections officers, alleging under § 1983 that the defendants violated his substantive due process rights when they provided him with razor blades and failed to respond in a timely manner to his emergency calls for help. The officers moved to dismiss for failure to state a claim. The district court granted the motion. The court held that a county corrections officer's act of providing the pretrial detainee with two razor blades and then leaving the detainee alone for over an hour so that detainee could shave before trial, during which time the detainee committed suicide, did not violate the detainee's substantive due process rights under the United States Constitution or the New Mexico Constitution, where the officer did not know that the detainee posed any suicide risk. The court also held that the officer was entitled to qualified immunity from the § 1983 claim that the officer violated the pretrial detainee's substantive due process rights, where there was no due process violation, as the officer did not know that the detainee posed any suicide risk, and a detainee's substantive due process right not to be left alone with razor blades was not clearly established at the time of the incident. The court also found that a corrections officer was entitled to qualified immunity from the § 1983 claim that the officer violated the substantive due process rights of the detainee by failing to respond to the detainee's calls for help. According to the court, the officer's conduct did not rise to the level of a due process violation, and the substantive due process right of the detainee to have an officer respond to a call was not clearly established absent evidence that the officer heard the call or knew of a suicide risk. (Lea County Detention Center, New Mexico)

U.S. District Court
SEXUAL ASSAULT

Hampton v. Sabie, 891 F.Supp.2d 1014 (N.D.Ill. 2012). A former inmate at a juvenile correctional facility brought a § 1983 action against a correctional officer and the facility superintendent, alleging that the officer sexually assaulted him and that the superintendent was deliberately indifferent to the inmate's constitutional rights by failing to protect him from the assault. The superintendent moved to dismiss. The district court granted the motion. The court held that the inmate's § 1983 claim was governed by the state's general two-year limitations period for personal injury claims, rather than the state's six-year statute applicable to sexual assaults against a child. (Illinois Youth Center)

U.S. Appeals Court
TRANSPORTATION

Jabbar v. Fischer, 683 F.3d 54 (2nd Cir. 2012). A state prison inmate brought an action against prison officials alleging that his constitutional rights under the Eighth and Fourteenth Amendments were violated when he was transported on a bus without a seatbelt and was injured when thrown from his seat. The defendants moved to dismiss for failure to state a claim. The district court granted the motion and the inmate appealed. The appeals court affirmed. The court held that the failure of prison officials to provide inmates in transport with seatbelts does not, without more, violate the Eighth Amendment's prohibition against cruel and unusual punishment or the Due Process Clause of the Fourteenth Amendment. The court noted that a bus seatbelt for a prison inmate in transport is not a life necessity, the deprivation of which constitutes cruel and unusual punishment under the Eighth Amendment. According to the court, a correctional facility's use of vehicles without seatbelts to transport prison inmates, when based on legitimate penological concerns rather than an intent to punish, is reasonable under the Eighth Amendment. (Woodbourne Correctional Facility, Ulster Correctional Facility, New York)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Jackson v. Gandy, 877 F.Supp.2d 159 (D.N.J. 2012). A state prisoner brought a § 1983 action against a department of corrections, corrections officers, and prison officials, alleging violations of his Eighth Amendment right against cruel and unusual punishment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that there was no evidence that prison officials were personally involved in a corrections officers' alleged assault on the state prisoner, as required to establish supervisory liability against the officials under § 1983, despite defense counsel's bare assertions of deliberate indifference and notice of assaultive history. The court ruled that summary judgment was precluded by genuine issues of material fact as to whether the force used by corrections officers to subdue the prisoner was excessive and in violation of Eighth Amendment, and whether a corrections officer participated in the alleged assault on the prisoner. The court held that the corrections officers were not entitled to qualified immunity where the prisoner's complaint alleged a violation of the constitutional right to be free from unnecessary and wanton infliction of pain, and such right was clearly established at the time of the officers' alleged misconduct. The court

also held that summary judgment was precluded by a genuine issue of material fact as to whether the prisoner exhausted his administrative remedies regarding the excessive force claim against corrections officials in accordance with the requirements of the Prison Litigation Reform Act (PLRA). (N.J. Department of Corrections, Bayside State Prison)

U.S. District Court
OFFICER ON PRISONER
ASSAULT

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. District Court
MEDICAL CARE

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. Appeals Court
SUICIDE

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
OFFICER ON PRISONER
ASSAULT
USE OF FORCE
INTIMIDATION

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. District Court
SEXUAL ASSAULT
PLRA- Prison Litigation
Reform Act

Morrison v. Parmele, 892 F.Supp.2d 485 (W.D.N.Y. 2012). A state prisoner brought a § 1983 action against corrections officers, alleging that his constitutional rights were violated while he was incarcerated, when officers assaulted him in retaliation for his complaints that he was being sexually assaulted by another inmate, and filed a false misbehavior report against him. The officers moved for summary judgment. The district court granted the motion, holding that the prisoner failed to show that special circumstances excused his failure to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA). (Groveland Correctional Facility, New York)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Moulton v. DeSue, 966 F.Supp.2d 1298 (M.D.Fla. 2012). The personal representative of a jail inmate's estate brought a § 1983 action against correctional officers, a nurse, and a sheriff, alleging deliberate indifference to the inmate's right to adequate medical care while in pretrial confinement, which resulted in her death. The defendants filed motions for summary judgment. The district court denied the motions in part and granted the motions in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers' failure to call emergency rescue when the pregnant jail inmate complained of stomach cramps constituted more than grossly negligent disregard of a substantial risk of a serious harm, precluding summary judgment for the officers on the deliberate indifference to the inmate's serious medical need claim. According to the court, correctional officers were on notice that their alleged actions or inactions violated the jail inmate's clearly established Fourteenth Amendment right to adequate medical care, and, thus, the officers were not entitled to qualified immunity in § 1983 action. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the correctional officers acted with ill will or malice toward the jail inmate, or exhibited reckless indifference. (Bradford County Jail, Florida)

U.S. Appeals Court
MEDICAL CARE
PROTECTION FROM
HARM

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 knife-point after her release and either jumped or was pushed from a window, causing permanent brain damage. The district court denied summary judgment in part for the defendants. The defendants sought relief through interlocutory appeal. The appeals court affirmed in part, denied in part, and remanded. The appeals held that: (1) the arrestee, as a person in custody, had clearly a established right for police to provide care for her serious medical condition; (2) whether the police should have understood that the arrestee had a serious medical condition, and thus should have provided care, was a factual issue that could not be decided on interlocutory appeal; (3) causation was a factual issue not suited to resolution on interlocutory appeal of denial of qualified immunity; (4) the arrestee did not have a clearly established constitutional right for her release to be delayed pending mental-health treatment; (5) the arrestee had a clearly established due process right for the police to not create danger, without justification, by arresting her in a safe place and releasing her in a hazardous one while unable to protect herself; (6) the arresting officer was entitled to qualified immunity; (7) the watch officer was not entitled to qualified immunity; and (8) a detention aide was not entitled to qualified immunity. According to the court, a police officer who was responsible for preparing the arrestee's individual-recognizance bond and collecting possessions that were to be returned on her release, and who received a telephone call from the mother of the arrestee regarding the arrestee's bi-polar condition and did nothing in response and who did not even note the call in a log, was not entitled to qualified immunity to the civil rights claims that the police had created a danger, without justification. The court found that the detention aide who was responsible for evaluating inmates, observed the arrestee behaving in a mentally unstable way, such as smearing menstrual blood on her cell walls, and transferred another person out of the arrestee's cell because of her inappropriate behavior, and yet did nothing to alert other personnel at the stationhouse, was not entitled to qualified immunity to the civil rights claims that the police did not arrange for medical treatment of serious conditions while the arrestee's custody continued. (8th District Station, 2nd District Station, Chicago Police Department)

U.S. District Court
SUICIDE
MEDICAL CARE
SUPERVISION

Ponzini v. Monroe County, 897 F.Supp.2d 282 (M.D.Pa. 2012). Survivors of a pretrial detainee sued prison officials, medical care providers and a corrections officer under § 1983 and state tort law, claiming that they were deliberately indifferent to the serious medical needs of the detainee, who committed suicide. The detainee allegedly did not receive his medication during his confinement. The survivors noted that one of the medications, Paxil, has "a short half-life and leaves a user's system very quickly," and that its withdrawal symptoms include "worsening of underlying anxiety or depression, headache, tremor or 'shakes', gastrointestinal distress and fatigue-, all of which were allegedly present in detainee during his incarceration." The detainee had also been taking Trazadone. The survivors alleged that during the period in which the detainee was incarcerated at the facility, officers were aware that the detainee should have been monitored closely and placed on a suicide watch. The survivors asserted that, although the detainee was not on a suicide watch, the inmate housed in an adjacent cell was on such a watch. An officer was expected to pass the neighboring cell, and by virtue of its location, the detainee's cell, every fifteen minutes. The survivors alleged that the officer falsified documents demonstrating that he properly made his rounds every fifteen minutes, and that officer failure to properly maintain a suicide watch on the detainee's neighbor facilitated the detainee's own suicide. The detainee killed himself by swallowing shreds of his own t-shirt. The court held that the survivors stated a § 1983 claim under the Fourteenth Amendment against prison officials for deliberate indifference to the serious medical needs of the detainee, who committed suicide allegedly as a result of a lack of daily medication necessary to treat depression and other psychological issues. According to the court, the complaint raised the possibility that prison officials knew that the detainee suffered from a severe medical condition and did not attempt to provide appropriate, necessary care in a timely manner. The court held that the survivors also stated a § 1983 claim under the Fourteenth Amendment against the corporate medical provider for deliberate indifference. (PrimeCare Medical, Inc., and Monroe County Correctional Facility, Pennsylvania)

U.S. Appeals Court
MEDICAL CARE
PRISONER ON PRISONER
ASSAULT
USE OF FORCE
WRONGFUL DEATH

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
MEDICAL CARE
WRONGFUL DEATH

Rigg v. City of Lakewood, 896 F.Supp.2d 978 (D.Colo. 2012). The wife of a detainee who died while in the custody of police officers filed suit, on her own behalf and as the personal representative of her decedent's estate, asserting due process claims pursuant to § 1983 and common law wrongful death claims against two cities and two police departments. The defendants moved to dismiss. The district court granted the motions. The court held that the representative failed to sufficiently allege a § 1983 claim for municipal liability against the two cities for deprivation of due process by their purported indifference to the detainee's medical needs, since the complaint did not allege the existence of a municipal custom or policy that was causally linked to the due process violation. (Lakewood Police Station, Colorado)

U.S. Appeals Court
SUICIDE
TRANSPORTATION
MEDICAL CARE

Rosario v. Brawn, 670 F.3d 816 (7th Cir. 2012). The father of a detainee who committed suicide while in police custody brought a § 1983 action against police officers, alleging deliberate indifference to the detainee's risk of suicide in violation of the detainee's right to due process under Fourteenth Amendment. The district court granted summary judgment to the police officers, and the father appealed. The appeals court affirmed. The court held that the police officers did not intentionally disregard a substantial risk that the detainee would commit suicide, as required for liability on a due-process claim alleging deliberately indifferent treatment of the detainee. The detainee committed suicide while being transported to a mental health facility after exhibiting self-destructive behavior. The officers failed to discover the detainee's razor blade, which he used to commit suicide. According to the court, their overall actions toward the detainee showed protection and compassion by searching the detainee, arranging for assessment of his mental condition, ensuring his comfort during transportation, and personally administering first aid despite his resistance. (Washington County Sheriff, Wisconsin)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Schwartz v. Lassen County ex rel. Lassen County Jail (Detention Facility), 838 F.Supp.2d 1045 (E.D.Cal. 2012). The mother of a deceased pretrial detainee brought a § 1983 action on behalf of herself and as successor in interest against a county, sheriff, city, police department, and several officers, alleging violations of the Fourteenth Amendment. The defendants filed a motion to dismiss. The district court granted the motion in part and denied in part. The court held that allegations that: (1) the undersheriff knew the pretrial detainee from various encounters with the county, including his diverticulitis and congenital heart condition that required a restricted diet; (2) the undersheriff gave testimony to set bail for the detainee at \$150,000 on a misdemeanor offense; (3) the detainee's doctor sent a letter explaining the detainee should be put on house arrest as opposed to detention because of his medical condition; (4) the detainee had to be admitted to a hospital for emergency surgery during a previous confinement; (5) the detainee's mother requested he be released for medical attention; (6) the detainee lost over 40 pounds during two weeks of detention; (7) the detainee requested to see a doctor but was told to "quit complaining;" and (8) the undersheriff personally knew the detainee was critically ill, were sufficient to plead that the undersheriff knew of and failed to respond to the detainee's serious medical condition, as would be deliberate indifference required to state a § 1983 claim alleging violations of Fourteenth Amendment due process after the detainee died. According to the court, allegations that the pretrial detainee's health was visibly deteriorating, that he had requested medical care on numerous occasions, and that the undersheriff knew of his health issues but failed to ensure that the prison provided him medical care, were sufficient to plead a causal connection between the undersheriff's conduct and denial of medical care for the detainee's serious medical need, as required to state a § 1983 supervisory liability claim against the undersheriff alleging violations of Fourteenth Amend-

ment due process after the detainee died. The court also found that allegations were sufficient to plead that training was obviously deficient, as required to state a § 1983 claim for municipal liability against the city, alleging violations of the Fourteenth Amendment due process after the detainee died. The court found that allegations that the undersheriff owed the pretrial detainee an affirmative duty to keep the jail and prisoners in it, and that he was answerable for their safekeeping, were sufficient to plead a duty, as required to state a claim of negligent infliction of emotional distress (NIED) under California law against the undersheriff after the detainee died. (Lassen County Adult Detention Facility, California)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
SUPERVISION
WRONGFUL DEATH

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 found that the Bureau of Prisons' (BOP) alleged decision not to allow the mother of federal inmate, who was in coma after being severely beaten by a fellow inmate, to visit her son after the BOP allegedly failed to complete a visitation memorandum, was not so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized community, thus precluding the mother's intentional infliction of emotional distress claim under Missouri law. (Federal Correctional Institution, Allenwood, Pennsylvania)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
SUPERVISION

Smith v. Knox County Jail, 666 F.3d 1037 (7th Cir. 2012). A pretrial detainee brought a pro se action against a county jail under § 1983, alleging that jail officials violated the Eighth Amendment because they were deliberately indifferent to his serious medical needs after a fellow inmate attacked him. The district court dismissed the case and the detainee appealed. The appeals court vacated and remanded. The court held that the detainee stated a claim for deliberate indifference under the Due Process Clause of the Fourteenth Amendment with his allegations that while he was asleep in his cell a guard opened the door and allowed another inmate to attack him, that he requested medical attention after the attack but received none for five days, and that the guard knew of his "obvious blood," dizziness, throwing up, blind spots, severe pain, and loss of eye color. (Knox County Jail, Ill.)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

Sullivan v. Dart, 897 F.Supp.2d 694 (N.D.Ill. 2012). A pretrial detainee brought a § 1983 action against a county, corrections officers, and a sheriff, alleging deliberate indifference to undue punishment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the detainee's § 1983 complaint stated a claim against a correctional officer for deliberate indifference to a serious need in violation of the Fourteenth Amendment, where the complaint alleged facts that indicated that the officer left inmates visually and audibly unsupervised for hours, knowing that a substantial risk of harm was present. The complaint further alleged that there were no light bulbs in the detainee's cell, no intercoms or emergency call buttons in cells, and no overhead cameras on his tier of the jail. According to the court, the complaint stated that the harm the detainee suffered at the hands of other inmates was significant, including severe injuries to his right eye and bleeding from his ear, and the complaint alleged that the detainee was the only person of Hispanic origin housed in the maximum security tier, while a significant majority of other inmates were African American, and that these circumstances put the detainee in an identifiable group of prisoners who were singled out for attack. (Division One, Cook County Department of Corrections, Illinois)

U.S. District Court
MEDICAL CARE
SUICIDE ATTEMPT
USE OF FORCE

Stanfill v. Talton, 851 F.Supp.2d 1346 (M.D.Ga. 2012). The father of a pretrial detainee who died while in custody at a county jail brought a § 1983 action individually, and as administrator of the detainee's estate, against a county sheriff and others, alleging that the defendants violated the detainee's rights under the Eighth and Fourteenth amendments. The county defendants moved for summary judgment, and the father cross-moved for partial summary judgment and for sanctions. The district court granted the defendants' motion for summary judgment. The court held that the father failed to establish that the county defendants had a duty to preserve any video of the detainee in his cells, as would support sanctions against the defendants in the father's civil rights action. The court noted that the defendants did not anticipate litigation resulting from the detainee's death, the father did not file suit until almost two years after the detainee's death, and there was no indication that the father requested that the defendants impose a litigation hold or provided the defendants any form of notice that litigation was imminent or even contemplated until the lawsuit was actually filed.

The court found that county correctional officers' use of force in placing the detainee in a restraint chair was not excessive, in violation of the Fourteenth Amendment, where less than one hour before the detainee was placed in the chair he had tied tourniquet around his arm, somehow removed metal button from his prison jumpsuit, cut his wrist or arm, and sprayed blood across his cell. The court noted that the officers were familiar with the inmate's history of self-mutilation, and the extent of injury inflicted by the officers' use of the chair was minimal, and the officers made some effort to temper the severity of their use of force. After the detainee was placed back in the restraint chair, he was given water, and a jail nurse, at one officer's request, took the inmate's blood pressure, pulse, and breathing rate, and determined that the detainee appeared in normal health and needed no further medical care.

The court also held that the officers' continued restraint of the detainee in the restraint chair was not

excessive, as would violate the Fourteenth Amendment where the officers were aware of detainee's history of self-mutilation, the detainee posed a serious risk of harm to himself, and the particular circumstances confronting the officers justified the continued use of restraints until the officers were reasonably assured that the situation had abated. According to the court, even if the history of the detainee as a "cutter" constituted a serious medical need, there was no evidence that the county correctional officers were deliberately indifferent to that need, in violation of the Fourteenth Amendment, where the only risk of harm the officers were subjectively aware of was the detainee's potential to injure himself. Despite the detainee's refusal to speak with medical staff upon arrival at jail, he was immediately classified as a suicide risk due to his self-destructive history and was placed on a suicide watch, and for two days, the detainee remained on suicide watch in jail custody, whereby he was observed at least every 15 minutes, without incident. The court concluded that there was no causal connection between the county correctional officers' alleged indifference to the detainee's medical needs and detainee's death while in custody at the county jail, as would support a Fourteenth Amendment deliberate indifference claim brought by the detainee's father. The court noted that the father's medical expert opined that the detainee's death was not causally related to his restraint in the chair, and although the expert listed dehydration as a contributing cause of the detainee's sudden cardiac dysrhythmia that led to the detainee's death, the expert did not testify that the detainee would have survived had he not been dehydrated.

The court held that the father failed to show, by way of medical evidence, that an alleged six-minute delay of a correctional officer in performing resuscitation efforts once the detainee was found unresponsive, was the cause of the detainee's death, as would support the father's Fourteenth Amendment deliberate indifference claim against the county defendants. The court ruled that "All parties can agree that Stanfill's death was unfortunate, and that in hindsight, perhaps more could have been done. Hindsight, however, is not an appropriate lens through which to view the Defendants' actions. The Plaintiff has failed to meet his burden of proving that the Defendants violated Stanfill's constitutional rights. The Defendants are therefore entitled to qualified immunity." (Houston County Detention Center, Georgia)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Taylor v. Hale, 909 F.Supp.2d 1320 (N.D.Ala. 2012). A pretrial detainee brought § 1983 and Bivens actions against county deputy sheriffs and deputy United States marshals alleging they used excessive force against him. The defendants moved for summary judgment. The district court granted the motion and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether county deputy sheriffs used more force than was necessary to subdue the detainee and place him in a holding cell. The court also found that summary judgment was precluded by a genuine issue of material fact as to whether one county deputy sheriff, and a United States Marshal, failed to protect the detainee from an alleged use of excessive force by two other deputy sheriffs. According to the court, a deputy sheriff's and a United States Marshal's alleged conduct of failing to intervene when she witnessed two other deputy sheriffs use excessive force against the detainee violated the clearly established duty of officers to protect inmates in their care from assault by fellow officers, and thus, they were not entitled to qualified immunity on the detainee's § 1983 claim against her, alleging deliberate indifference to a substantial danger to the detainee in violation of his Fourteenth Amendment rights. During the booking process, a deputy allegedly forced the detainee to the floor on his stomach with a "combination of repetitious blows to the temple, jaw, neck, and ribs" and he was then handcuffed dragged to the holding cell where the beating continued. (Jefferson County Jail, Birmingham, Alabama)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Todd v. Montoya, 877 F.Supp.2d 1048 (D.N.M. 2012). A pretrial detainee brought a § 1983 action against a corrections officer and prison officials, alleging cruel and unusual punishment, and state claims for negligence, gross negligence, and recklessness. The corrections officer moved for summary judgment and the detainee moved for additional discovery. The district court granted the officer's motion and denied the detainee's motion. The court found that there was evidence that the detainee suffered an injury that was more than de minimis, as required to meet the objective element of a § 1983 claim against corrections official for deliberate indifference to a substantial risk of serious harm, in violation of the Due Process Clause. According to the court, there was evidence showing that the detainee received a beating from two other prisoners, including having them hit him in the face and attacking him for two to three minutes. But the court held that there was no evidence that a corrections officer acted with deliberate indifference when the detainee was physically assaulted by the other prisoners. The court noted that the officer called other officers to come stop the fight almost immediately after the physical altercation involving the detainee began. The court held that there was no evidence that the corrections officer permitted two prisoners to discover the detainee's criminal history as a sex offender in such a way that caused the detainee's beating, as required to support the detainee's negligence claim against the officer under New Mexico law. (Bernalillo County Metropolitan Detention Center, Albuquerque, New Mexico)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

U.S. v. Wilson, 686 F.3d 868 (8th Cir. 2012). Following the denial, in part, of his motion to suppress evidence, the defendant, the chief administrator of a county jail, was convicted, by a jury in the United States District Court of four counts of deprivation of rights and two counts of making false statements, arising out of injuries caused to four inmates. He appealed. The appeals court affirmed. The appeals court held that the district court did not err in applying the physical-restraint enhancement where the defendant violated his victims' constitutional rights while they were prisoners locked up in enclosed areas in a county jail, and the jury found that he purposefully moved two of them from cells where they were safe so that they would be assaulted in a cell holding violent inmates. The court noted that not only did the administrator, in moving the two prisoners, insinuate that the other inmates should assault them, but he rewarded the assaulting inmates with cigarettes after each of the incidents. The district court sentenced the administrator to 120 months' imprisonment on each of the § 242 counts, and 60 months' imprisonment on each of the § 1001 counts, with all terms to be served concurrently. (Washington County Jail, Missouri)

U.S. Appeals Court
SEARCHES
USE OF FORCE

Washington v. Hively, 695 F.3d 641 (7th Cir. 2012). A federal pretrial detainee filed a § 1983 action alleging that a county jail guard improperly touched him during a pat down and strip search. The detainee alleged that while patting him down, the guard spent five to seven seconds gratuitously fondling the plaintiff's testicles and penis through the plaintiff's clothing and then while strip searching him fondled his nude testicles for two or three seconds, contrary to a jail policy which forbids touching the inmate in the course of a strip search, and again without any justification. The district court entered summary judgment in the guard's favor, and the detainee appealed. The appeals court reversed and remanded. The appeals court held that: (1) the detainee's allegation that the guard touched his private parts to humiliate him or to gratify the guard's sexual desires was sufficient to state a claim, whether or not the force exerted by the guard was significant; (2) fact issues remained as to the guard's subjective intent in conducting the pat down and strip search; and (3) a statute barring federal civil actions by prisoners for mental or emotional injuries absent a showing of physical injury did not bar the pretrial detainee from seeking both nominal and punitive damages in his § 1983 action, even though the detainee did not claim to have suffered any physical injury. (Waukesha County Jail, Wisconsin)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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
SEXUAL ASSAULT
OFFICER ON PRISONER
ASSAULT

Wood v. Beauclair, 692 F.3d 1041 (9th Cir. 2012). A male state prisoner filed a civil rights action alleging sexual abuse by a female prison guard in violation of the First, Fourth, and Eighth Amendments. The district court granted summary judgment to the defendants and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that: (1) the prisoner established non-consent; (2) sexual abuse of the prisoner by a prison guard constituted malicious and sadistic use of force; (3) the sexual assault on the prisoner by the prison guard was deeply offensive to human dignity and was completely void of penological justification; (4) supervisory prison officials were not on notice that the prison guard presented a substantial risk to the prisoner through sexual abuse; and (5) prison officials did not retaliate against the prisoner for filing a grievance. According to the court, the prisoner established non-consent for purposes of surviving summary judgment, where the prisoner and guard were in a consensual relationship that involved hugging and kissing, then they were involved in a disagreement and the prisoner told the guard to "back off" and that they had to "stop" seeing each other for a while, and then the initial sexual encounter that gave rise to the action occurred. (Idaho Correctional Institution of Orofino)

2013

U.S. District Court
PRISONER ON PRISONER
ASSAULT
MEDICAL CARE

Alsbrook v. Alvarado, 986 F.Supp.2d 1312 (S.D.Fla. 2013). A state prisoner who was seriously injured in a fight with his cellmate brought a § 1983 action against a warden, corrections officers, prison nurse, the prison's healthcare provider, and the Secretary of the Florida Department of Corrections. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the prisoner sufficiently alleged that a corrections officer was deliberately indifferent to a risk of serious harm posed by the cellmate, in violation of the Eighth Amendment, where: (1) the prisoner alleged that his cellmate told the officer that he would become violent if the prisoner was not removed from the cell; (2) the prisoner requested to be separated from his cellmate; (3) the officer did nothing in response to this information; and (4) that a fight ensued, which resulted in serious injuries to the prisoner. The court held that the prisoner sufficiently alleged that the treatment he received from a prison nurse after he was brought to the infirmary following a fight with his cellmate was so grossly inadequate that it amounted to no treatment at all, and thus he stated a § 1983 claim that the nurse was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. The prisoner alleged that he was brought to the infirmary with open wounds, swelling on his head and face, and covered with blood, that he vomited while awaiting treatment and, after being "treated," he left the infirmary with open wounds, swelling on his head and face, covered with blood, and with four ibuprofen in his pocket. (South Florida Reception Center, Florida)

U.S. District Court
PRISONER ON
PRISONER ASSAULT

Ayotte v. Barnhart, 973 F.Supp.2d 70 (D.Me. 2013). A state inmate filed a § 1983 action alleging that prison officials failed to protect him from a padlock assault by a fellow prisoner, and retaliated against him for filing complaints about prison conditions. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the decision by state prison officials to provide inmates

with padlocks to secure their personal belongings did not demonstrate deliberate indifference to a substantial risk of serious harm, as required to establish an Eighth Amendment violation, despite the history of padlocks being used as weapons by some prisoners. The court noted that a state statute required officials to provide inmates with a reasonably secure area for their personal belongings, and there were generally only one or two padlock assaults per year. The court found that verbal abuse, threats, and two strip-searches of the inmate by a prison guard were not de minimis, and thus were sufficiently adverse to support the inmate's First Amendment retaliation claim against the guard. Because inmates' rights against retaliatory action by prison officials for filing complaints about their treatment were clearly established, the court ruled that the prison guards were not entitled to qualified immunity from liability in the inmate's § 1983 First Amendment retaliation action. (Maine State Prison)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

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

U.S. Appeals Court
MEDICAL CARE
PROTECTION FROM
HARM
SUICIDE

Belbachir v. County of McHenry, 726 F.3d 975 (7th Cir. 2013). The administrator of the estate of a female federal detainee who committed suicide in a county jail filed suit against the county, county jail officials, and employees of the medical provider that had a contract with the county to provide medical services at the jail, alleging violation of the detainee's due process rights and Illinois tort claims. The district court granted summary judgment in favor of all county defendants. The administrator appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court found that the jail inmate who was detained by federal immigration authorities pending her removal hearing was in the same position as a lawfully arrested pretrial detainee. The court noted that a pretrial detainee was entitled, pursuant to the due process clause, to at least as much protection during her detention as convicted criminals were entitled to under the Eighth Amendment--namely protection from harm caused by a defendant's deliberate indifference to the inmate's safety or health. The court asserted that persons who have been involuntarily committed are entitled, under the due process clause, to more considerate treatment during detention than criminals whose conditions of confinement are designed to punish. The court found that the alleged conduct of a clinical social worker at the county jail who interviewed the detainee, in noting that the detainee suffered from a major depressive disorder, hallucinations, acute anxiety, and feelings of hopelessness, but allegedly failing to report those findings to the jail guards or any other jail staff or to recommend that the detainee be placed on a suicide watch or receive mental health treatment, amounted to deliberate indifference to the detainee's risk of suicide, in violation of the detainee's due process rights.

The court held that a nurse manager employed by the medical provider was not deliberately indifferent to the detainee's risk of suicide, as would violate the detainee's due process rights, where the nurse manager treated the detainee for panic attacks and anxiety, and recommended that she be given a cellmate and transferred to a medical treatment area at the jail, both of which were done, and there was no showing that the nurse manager knew that the detainee was suicidal. According to the court, the county sheriff's and county jail director's failure to provide annual training to jail staff on how to recognize the risk of suicide in detainees, and their failure to implement a suicide prevention policy, did not render the county liable under § 1983 for the detainee's suicide during her detention at the jail, absent a showing that such failures caused the detainee's suicide. (McHenry County Jail, Illinois)

U.S. District Court
TRANSPORTATION
OFFICER ON PRISONER
ASSAULT

Benton v. Rousseau, 940 F.Supp.2d 1370 (M.D.Fla. 2013). A pretrial detainee, who alleged that he was beaten by drivers while being transported to prison, brought a § 1983 action against drivers of a private company which was in the business of transporting prisoners throughout the State of Florida. The district court held that the inmate established a § 1983 First Amendment retaliation claim and a § 1983 Fourteenth Amendment excessive force claim. According to the court: (1) the prisoner engaged in constitutionally protected speech because he complained about conditions of his confinement in the transport vehicle; (2) the driver of transport vehicle engaged in adverse or retaliatory conduct by pulling the inmate out of the van and onto the ground and beating and kicking the inmate; and (3) there was a causal connection between the driver's retaliatory action and inmate's protected speech, in that the incident would not have occurred but for the inmate's complaints regarding conditions of his confinement. The court noted that the inmate's injuries included headaches and facial scars, and his injuries, although perhaps not serious, amounted to more than de minimis injuries. The court ruled that the inmate was entitled to \$45,012 in compensatory damages because the inmate had scarring on his face and suffered from headaches and numbness in his side, he suffered the loss of a \$12 shirt, and he suffered mental and emotional anguish as a result of actions of drivers of transport van, who kicked and beat him. The court held that the inmate was entitled to punitive damages in the amount of \$15,000 based on the violation of his First and Fourteenth Amendment rights by the drivers. The court noted that although the drivers were no longer employed by their private employer, the employer did not investigate after the incident nor did it punish the drivers for their actions, and imposition of punitive damages would deter the drivers from taking similar actions in the future. (United States Prisoner Transport, Hernando County Jail, Florida)

U.S. Appeals Court
JUVENILES
SUICIDE ATTEMPT

Blackmon v. Sutton, 734 F.3d 1237 (10th Cir. 2013). A former juvenile pretrial detainee brought a § 1983 action against various members of a juvenile detention center's staff, alleging they violated the Fourteenth Amendment rights guaranteed to him as a pretrial detainee. The district court denied the defendants' motion for summary judgment based on qualified immunity. The defendants appealed. The appeals court affirmed in part, and reversed in part. The court held that the eleven-year-old pretrial detainee's right to be free from punishment altogether was clearly established at the time the staff allegedly used a chair bearing wrist, waist, chest, and ankle restraints to punish detainee, for the purposes of the juvenile detention center's staff's qualified immunity defense. According to the court, the senior correctional officer approved a decision by one of his subordinates, a

fully grown man, to sit on the chest of the eleven-year-old without any penological purpose. The court found that the detainee's Fourteenth Amendment due process rights were violated when employees allegedly failed to provide the eleven-year-old detainee with any meaningful mental health care despite his obvious need for it. The court noted that prison officials who assumed a "gate keeping" authority over the prisoner's access to medical professionals were deliberately indifferent to the detainee's medical needs when they denied or delayed access to medical care. But the court also held that the detainee's alleged right to be placed in a particular facility of his choice while awaiting trial was not clearly established at the time the director failed to transfer detainee to a nearby shelter, for purposes of the juvenile detention center director's qualified immunity defense. The court stated: "Weeks before eleven-year-old, 4'11," 96-pound Brandon Blackmon arrived at the juvenile detention center in Sedgwick, Kansas, officials there made a new purchase: the Pro-Strait Restraining Chair, Violent Prisoner Chair Model RC-1200LX. The chair bore wrist, waist, chest, and ankle restraints. In the months that followed, the staff made liberal use of their new acquisition on the center's youngest and smallest charge. Sometimes in a legitimate effort to thwart his attempts at suicide and self-harm. But sometimes, it seems, only to punish him. And that's the nub of this lawsuit." (Juvenile Residential Facility, Sedgwick County, Kansas)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

Brown v. Massachusetts, 950 F.Supp.2d 274 (D.Mass. 2013). An inmate brought an action under § 1983 for deliberate indifference to his health, against corrections facility officers and a superintendent. The officers and superintendent moved to dismiss. The district court granted the motion in part, and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the inmate's complaints about another inmate who had violent tendencies being placed in his cell, and corrections officers' refusal to move him, were able to be grieved within the meaning of the provision of the Prison Litigation Reform Act (PLRA) that required the exhaustion of administrative remedies for grievable complaints. According to the court, summary judgment was also precluded by a genuine issue of material fact as to whether the corrections officers were aware they exposed the inmate to a serious risk of harm by placing another inmate who had violent tendencies in his cell, and by refusing to separate the two after the first inmate explained to the officers that he feared for his safety. Summary judgment was also precluded due to fact issues as to whether the inmate's complaint to the corrections officers that he did not feel safe with another inmate who had been placed in his cell, would trigger the inmate's clearly established right to be free from violence at the hands of other prisoners. (Essex County Corrections Facility, Massachusetts)

U.S. Appeals Court
MEDICAL CARE
USE OF FORCE

Burgess v. Fischer, 735 F.3d 462 (6th Cir. 2013). An arrestee brought an action under § 1983 against a county board of commissioners, sheriff, deputies, and jail nurse, alleging violations of his constitutional rights during his arrest. The defendants moved for summary judgment and the district court granted the motion. The arrestee appealed. The appeals court affirmed in part, vacated in part, reversed in part, and remanded. The appeals court held that: (1) a genuine issue of material fact existed as to whether the force used against the arrestee was reasonable; (2) a corrections officer and the jail nurse were not liable for failure to prevent deputy sheriffs from using excessive force, absent a showing that the nurse and officer had both the opportunity and the means to prevent the harm from occurring; (3) the nurse was not liable for deliberate indifference to the arrestee's medical needs, where the arrestee's latent cranial injury was not so obvious that a lay person would easily have recognized the necessity for a doctor's attention; (4) the county board of commissioners was not liable under § 1983 for any alleged conduct of deputy sheriffs in violating the arrestee's federal constitutional rights, absent a showing that any county policy or custom was the moving force behind the alleged violations; (5) a genuine issue of material fact existed as to whether a deputy sheriffs' use of force against the arrestee was reckless under Ohio law; (6) a genuine issue of material fact existed as to whether a deputy sheriff assaulted the arrestee in response to an off-color jibe; and (7) genuine issues of material fact existed as to whether the county board of commissioners, sheriff, and deputies knew that litigation was probable and whether their destruction of videotape evidence of deputies' use of force against the arrestee was willful.

The court also found that the jail nurse did not act with malice and in a wanton and willful manner in allowing the arrestee to sit in a county jail cell for 12 hours with serious injuries, where the nurse attended to the arrestee, assessed what she perceived to be minor injuries, provided him with ibuprofen for his pain, and advised him he could contact someone for further medical assistance if necessary. (Greene County Jail, Ohio)

U.S. District Court
MEDICAL CARE

Canales v. Gatzunis, 979 F.Supp.2d 164 (D.Mass. 2013). A former county jail inmate brought an action in state court against a county sheriff's department, the sheriff, the jail superintendent, a state public safety commissioner, and others, alleging the defendants subjected him to reckless, negligent, and cruel medical treatment. Some defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court found that because the county sheriff's department and other county defendants voluntarily removed to inmate's action to federal court, the defendants did not enjoy Eleventh Amendment immunity against any Massachusetts Tort Claims Act (MTCA) claims they would be subject to in state court as a result of waiver. The court held that the former jail inmate's allegations that the county defendants had a "disorganized medical program" at the jail and failed to maintain a "quality assurance program," and that the jail failed "to maintain adequate and accurate medical records," insufficiently pled that the jail superintendent was personally involved in misinforming the inmate that he had HIV and mistakenly administering another prisoner's HIV medication to the inmate, as would subject the superintendent to supervisory liability for his subordinates' alleged Eighth Amendment violations under § 1983. According to the court, the inmate's allegations that the "defendants" told the inmate that he had HIV and administered HIV medication to him, even though he did not have HIV, did not sufficiently state that the county jail superintendent was personally involved with the inmate's medical treatment or otherwise took any action with respect to the inmate, as would support the inmate's intentional infliction of emotional distress claim against the superintendent, in his individual capacity, under Massachusetts law. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
SUICIDE ATTEMPT
USE OF FORCE

Chennault v. Mitchell, 923 F.Supp.2d 765 (E.D.Va. 2013). The guardian for an incapacitated former pretrial detainee filed § 1983 action against a former sheriff and former officers of the sheriff's department for alleged violation of the detainee's Fourteenth Amendment right to due process, by deliberate indifference to her medical needs that resulted in her permanent brain damage from an attempted suicide. The defendants moved to dismiss. The district court granted the motion. The court held that sheriff's department officers were not deliberately indifferent to the serious medical needs of the detainee, as required to support the detainee's § 1983 claim for violation of her Fourteenth Amendment due process rights, where the officers had no knowledge or even any reason to suspect that the detainee presented a risk of suicide, rather than merely a risk of violent behavior towards officers. According to the court, the sheriff's department officers' pepper spraying of the detainee due to her violent behavior toward the officers, and then failing to decontaminate her, did not establish that the officers knew of and disregarded a substantial risk of harm to the detainee, where the officers did not know or have reason to believe that the detainee was suicidal at the time that she was sprayed, the detainee did not allege that the use of spray was unnecessary or excessive in amount, and the detainee did not exhibit any adverse reactions to the spray or to the lack of decontamination.

The court found that the sheriff's department officers' failure to support the detainee's body and/or neck when they cut her shirt on which she hung herself on cell bars in an attempted suicide did not constitute deliberate indifference to her serious medical needs in violation of her Fourteenth Amendment due process rights. The court noted that, even though the detainee's injuries were increased from sliding down cell bars and forcibly striking her head on the cell door, the officers faced an emergency and needed to act quickly and decisively to save the detainee's life. According to the court, their actions "...were not only reasonable in this situation, but laudable." The court held that the detainee's § 1983 claim that the sheriff failed to train jail personnel, to ensure they could adequately respond to the medical needs of combative and/or intoxicated detainees, was foreclosed by the lack of a Fourteenth Amendment violation by jail personnel and a lack of a causal link between the sheriff's policies and the detainee's attempted suicide, where jail personnel were not deliberately indifferent to the detainee's medical needs in violation of the detainee's due process rights, and there was no pattern of unconstitutional violations resulting in suicides or attempted suicides. (Richmond City Jail Annex, Virginia)

U.S. District Court
MEDICAL CARE
USE OF FORCE

Christie ex rel. estate of Christie v. Scott, 923 F.Supp.2d 1308 (M.D.Fla. 2013). An estate brought a § 1983 action against a private prison health services provider and corrections officers following the death of a detainee after he was pepper-sprayed over 12 times in 36 hours. The provider moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether failure of the nurses to inspect the detainee after each time he was pepper-sprayed constituted deliberate indifference; (2) whether the sheriff knew that corrections officers were using pepper spray nearly indiscriminately; (3) whether corrections officers were deliberately indifferent to the detainee's physical and medical needs; and (4) whether corrections officers' repeated pepper-spraying of the detainee while he was restrained naked in a chair was malicious and sadistic to the point of shocking the conscience. The estate alleged that the nurses' failed to evaluate the detainee after each time he was pepper-sprayed, failed to follow their employer's policy by not monitoring the detainee every 15 minutes for the periods he was restrained, and failed to offer the detainee fluids or a bedpan while he was restrained. The nurses allegedly checked the inmate only two times during the five hours he was restrained. The court found that the health services provider did not have a policy of understaffing that constituted deliberate indifference to the detainee's health, as required to support a § 1983 claim against the private provider. (Lee County Jail, Florida)

U.S. District Court
MEDICAL CARE
THREATS

Cooper v. Rogers, 968 F.Supp.2d 1121 (M.D.Ala. 2013). A female state prisoner filed a § 1983 action against jail officials in Alabama court, alleging deliberate indifference to her serious medical needs in violation of the Eighth Amendment. After the action was removed to federal court, officials moved for summary judgment. The district court granted the motion. The court held: (1) officials were acting within scope of their discretionary authority when they denied the pregnant prisoner medical care, as required to invoke qualified immunity; (2) the prisoner's prolonged vaginal bleeding accompanied by pain was a serious medical need; (3) officials acted with deliberate indifference to the prisoner's serious medical needs; but (4) evidence was insufficient to establish that deliberate indifference to prisoner's serious medical needs caused her miscarriage. The court noted that officials were aware that the prisoner was pregnant and that she was experiencing vaginal bleeding and pain, the prisoner testified that she made almost daily verbal requests for medical attention, officials ignored her requests or responded by threatening to send her to a women's prison, and told her to keep the baby inside of her. (Bullock County Jail, Alabama)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Currie v. Chhabra, 728 F.3d 626 (7th Cir. 2013). The administrator of the estate of a deceased arrestee brought an action against a county, jail officials, and health care providers, alleging various claims, including claims pursuant to § 1983 and the Illinois Wrongful Death Act, and for punitive damages. The district court denied the providers' motion to dismiss based on qualified immunity. The providers appealed prior to disposition by the district court. The appeals court affirmed. The appeals court held that the health care providers were not entitled to qualified immunity to the arrestee's estate's civil rights claim under the Fourth Amendment alleging that the providers' failure to monitor the arrestee's blood sugar level, provide insulin shots, and deliver other necessary medical care while the arrestee was detained in the county jail. According to the court, the officials' conduct was objectively unreasonable and caused the detainee's death, which resulted from diabetic ketoacidosis, a life-threatening condition associated with untreated Type I diabetes. The court noted that although prior Fourth Amendment medical care cases spoke only of "officers," those opinions did not hint at any special Fourth Amendment exemption for health care professionals. (Williamson County Jail, Illinois)

U.S. District Court
PROTECTION FROM
HARM
THREATS

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

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Duran v. Merline, 923 F.Supp.2d 702 (D.N.J. 2013). A former pretrial detainee at a county detention facility brought a pro se § 1983 action against various facility officials and employees, the company which provided food and sanitation services to the facility, and the medical services provider, alleging various constitutional torts related to his pretrial detention. The defendants moved for summary judgment. The district court granted the motions in part and denied in part. The district court held that fact issues precluded summary judgment on: (1) the conditions of confinement claim against a former warden in his official capacity; (2) an interference with legal mail claim against a correctional officer that alleged that the facility deliberately withheld the detainee's legal mail during a two-week period; (3) a First Amendment retaliation claim based on interference with legal mail; and (4) a claim for inadequate medical care as to whether the detainee's Hepatitis C condition was a serious medical condition that required treatment and whether the provider denied such treatment because it was too costly. The detainee asserted that overcrowding at the county detention facility, which allegedly led to the detainee being forced to sleep and eat his meals next to open toilet, and led to inmate-on-inmate violence, contributed to his assault by another inmate. According to the court, the long-standing conditions of confinement whereby the county detention facility was overcrowded for at least 24 years and facility officials "triple-celled" inmates, allegedly leading to unsanitary conditions, amounted to a "custom" for the purposes of the former detainee's § 1983 Fourteenth Amendment conditions of confinement claim against a former warden in his official capacity. The court held that the food service provider's serving the detainee cold meals for a 45-day period while the kitchen in the county detention facility was being renovated, was not "punishment," as would support the inmate's § 1983 Fourteenth Amendment conditions of confinement claim against the provider, absent evidence that the food served to the detainee was spoiled or contaminated, that a significant portion of the detainee's diet consisted of such food, or that the food service caused more than a temporary discomfort. The court also held that the alleged actions of the food service provider in serving the detainee one food item when another ran out, failing to serve bread with the inmate's meal, serving the inmate leftovers from days before, serving juice in a dirty container on one occasion, serving milk after its expiration date, and serving meals on cracked trays that caused the detainee to contract food poisoning, did not amount to a substantial deprivation of food sufficient to amount to unconstitutional conditions of confinement, as would violate the inmate's due process rights. (Atlantic County Justice Facility, New Jersey)

U.S. District Court
JUVENILES
SEXUAL ABUSE

E.A.F.F. v. U.S., 955 F.Supp.2d 707 (W.D.Tex. 2013). Unaccompanied alien minors brought an action against Office of Refugee Resettlement (ORR) officials, alleging they were physically and sexually abused while they were in detention awaiting final adjudication of their immigration status. The officials moved for partial summary judgment. The district court granted the motions. The court noted that a person detained for deportation is equivalent to a pretrial detainee, and a pretrial detainee's constitutional claims are considered under the Due Process Clause. The court held that the officials could not be held liable for due process violations that occurred when the unaccompanied alien minors were physically and sexually abused as a result of alleged overcrowding at a detention facility, where they were being held while awaiting final adjudication of their immigration status, and where there was no evidence that the officials were responsible for decisions regarding the facility's capacity. According to the court, isolated incidents of physical and sexual abuse by staff members at the detention facility were insufficient to put the officials on notice of a substantial risk of future abuse, as required to hold the officials liable for deliberate indifference in failing to protect the minors' safety in violation of their due process rights. The court noted that other incidents of alleged abuse were investigated by the Texas Department of Family and Protective Services and did not result in any abuse findings.

The court found that officials' failure to systematically interview minors concerning their abuse allegations did not amount to deliberate indifference to their safety in violation of their due process rights, where officials spoke to some of the minors during their monitoring visits, and clinicians were on-site and available to speak with the minors on a regular basis. The court held that the officials could not be held liable in their supervisory capacities on a theory of failure to train or supervise, for due process violations arising from alleged physical and sexual abuse by staff members at the detention facility, where staff members received training in behavior management and de-escalation techniques, officials responded to reports of abuse by recommending or providing further training, officials adopted safety policies designed to prevent abuse, and officials recommended that staff members work in pairs and they were unaware that staff members were working individually. (Nixon facility Operated by Away From Home, Inc., Texas)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

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
MEDICAL CARE
WRONGFUL DEATH

Estate of Prasad ex rel. Prasad v. County of Sutter, 958 F.Supp.2d 1101 (E.D.Cal. 2013). The estate of a deceased pretrial detainee brought an action against jail employees and officials, as well as medical staff, alleging violations of the Fourteenth Amendment. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that: (1) although the detainee died at a hospital, liability for the jail employees and officials was not precluded, where the jail employees and officials could have contributed to detainee's death despite the transfer to the hospital; (2) allegations were sufficient to plead deliberate indifference to serious medical needs by the deputies and medical staff; (3) allegations were sufficient to state a claim for supervisory liability; (4) allegations were sufficient to state a claim for supervisory liability against the corrections officers in charge; (5) allegations were sufficient to state a claim against the county; (6) allegations were sufficient to state a claim for wrongful death under California law; and (7) the health care provider was a state actor. The court found that a statement by health care providers, in an attachment to the complaint, that even if the detainee had been transferred to the hospital sooner, it "probably" would not have changed his death, was possibly self serving, and did not contradict the complaint's allegations that the detainee's death was unnecessary and unavoidable. According to the court, allegations that the county maintained customs or practices whereby no medical staff whatsoever were at the jail for one-sixth of every day, that the staff lacked authority to respond to emergency and critical inmate needs, and that the jail records system withheld information from affiliated health care providers, were sufficient to state a § 1983 claim against the county, alleging violations of the Fourteenth Amendment after the pretrial detainee died.

The court held that allegations that deficiencies in medical care at the jail, including lack of 24-hour emergency care, were longstanding, repeatedly documented, and expressly noted by officials in the past., and that the doctor who was employed by the health care provider that contracted with the prison was aware of the deficiencies, and that the doctor discharged the pretrial detainee to the jail were sufficient to plead deliberate indifference to serious medical needs, as required to state a § 1983 action against the doctor for violations of the Fourteenth Amendment after the detainee died. (Sutter County Jail, California)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
SEXUAL ASSAULT

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. Appeals Court
TRANSPORTATION

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

U.S. District Court
MEDICAL CARE
TRANSPORTATION

Fluker v. County of Kankakee, 945 F.Supp.2d 972 (C.D.Ill. 2013). An inmate and his wife filed a § 1983 action in state court against a county and the county sheriff's office to recover for injuries the inmate suffered when a correctional officer who was driving his prison transport vehicle was required to brake suddenly, causing the inmate to hurtle forward and hit his head on a metal divider. The case was removed to federal court. The district court granted the defendants' motion for summary judgment. The court held that: (1) the officials' failure to fasten the inmate's seatbelt did not violate the Eighth Amendment; the official's alleged driving above the posted speed limit did not violate the Eighth Amendment; and the officials' failure to immediately call for an ambulance did not violate the Eighth Amendment. The court noted that the officials, who were not medically trained, called a supervisor for guidance within one minute of the accident, and were told to continue to the jail where a trained first responder immediately assessed the inmate and cleaned and bandaged a laceration on his head when the transport van arrived 7 to 10 minutes later. The inmate was transported to a hospital within 10 to 15 minutes of arriving at the jail. (Jerome Combs Detention Center, Kankakee County, Illinois)

<p>U.S. District Court MEDICAL CARE WRONGFUL DEATH</p>	<p><i>Ford-Sholebo v. U.S.</i>, 980 F.Supp.2d 917 (N.D.Ill. 2013). The wife of a deceased pretrial detainee who suffered from a seizure disorder, individually and as administrator of the detainee's estate, brought a wrongful death action against the United States pursuant to the Federal Tort Claims Act (FTCA). The district court held that: (1) evidence supported a finding that the detainee had a seizure disorder; (2) correctional facility employees breached the standard of care for treating the detainee's seizure disorder; (3) the employees' failures and breaches of the standard of care proximately caused the detainee's death; and (4) an award of damages to the wife in the amount of \$40,000 for the loss of consortium was appropriate. The court noted that the testimony of the administrator's expert physician and a pathologist who was subpoenaed to testify at trial, that the detainee suffered from a seizure disorder, was overwhelmingly credible, while testimony of the government's two experts, that the detainee did not have seizure disorder, was incredible and unreliable. According to the court, the standard of care for treating the detainee's seizure disorder required correctional facility personnel, including physicians and physician assistants, to examine the detainee on a monthly basis, review the detainee's medical records, draw the detainee's blood for the purpose of monitoring the level of anti-seizure medication in his blood and obtain corresponding lab reports, and inform the detainee about the risks and benefits of taking or not taking medication, and to counsel him about his medication. The court found that the facility breached the appropriate standard of care, where required monthly evaluations were not conducted, facility personnel failed to make any efforts to retrieve the detainee's medical records while they were treating the detainee, facility physicians were derelict in their duty to review medical records they actually possessed and then to meet with the detainee in light of information they derived from those records, and physicians failed to talk to the detainee about his medication, to ask him why he was not taking his medication, and to counsel him about his noncompliance. (Metropolitan Correctional Center, Chicago, and Kankakee County Detention Center, Illinois)</p>
<p>U.S. Appeals Court SEXUAL ASSAULT OFFICER ON PRISONER ASSAULT</p>	<p><i>Franklin v. Curry</i>, 738 F.3d 1246 (11th Cir. 2013). A female pretrial detainee brought an action under § 1983 against a corrections officer and various other officers at a jail after she had been sexually assaulted. The district court denied the supervisory defendants' motion to dismiss and they appealed. The appeals court reversed, finding that the detainee had to allege that the supervisory officers actually knew of a serious risk that the offending officer posed, and that her complaint was insufficient to state a plausible claim that each supervisory officer should have known of a substantial risk that the offending officer would sexually assault her. (Shelby County Jail, Florida)</p>
<p>U.S. Appeals Court PRISONER ON PRISONER ASSAULT PROTECTION FROM HARM</p>	<p><i>Glaze v. Byrd</i>, 721 F.3d 528 (8th Cir. 2013). A pretrial detainee who had been beaten by three fellow inmates brought an action against a correctional officer, a lieutenant, and jail officials, alleging deliberate indifference to a substantial risk of serious harm, in violation of the Fourteenth Amendment. The district court denied the defendants' motion for summary judgment based on qualified immunity. The officer and the lieutenant appealed. The appeals court affirmed in part and reversed in part. The court held that summary judgment for the correctional officer was precluded by a fact question as to whether the correctional officer was aware of a substantial risk of harm to the detainee and was deliberately indifferent to his safety. (Faulkner County Detention Center, Arkansas)</p>
<p>U.S. Appeals Court PRISONER ON PRISONER ASSAULT SUPERVISION</p>	<p><i>Goodman v. Kimbrough</i>, 718 F.3d 1325 (11th Cir. 2013). The wife of a pretrial detainee who suffered from dementia and who was severely beaten by his cellmate filed a § 1983 action against jail officials in their individual capacities for alleged violation of the Due Process Clause by deliberate indifference to a substantial risk of harm to the detainee. The wife also asserted a supervisory liability claim against the sheriff in his official capacity and a state law claim for loss of support and consortium. The district court granted summary judgment for the defendants. The wife appealed. The appeals court affirmed. The court held that there was no evidence that jail officials were subjectively aware of a risk of serious harm to which the pretrial detainee was exposed from his severe beating by a cellmate, and that the officials deliberately disregarded that risk, as required to support the detainee's § 1983 claim of deliberate indifference in violation of the Due Process Clause. According to the court, the officers' failure to conduct cell checks and head counts and their deactivation of emergency call buttons constituted negligence but did not justify constitutional liability under § 1983. According to the court, jail officials' policy violations by failing to enter every cell in conducting head counts and in deactivating emergency call buttons did not constitute a custom so settled and permanent as to have the force of law. (Clayton County Jail, Georgia)</p>
<p>U.S. Appeals Court SEXUAL ASSAULT</p>	<p><i>Graham v. Sheriff of Logan County</i>, 741 F.3d 1118 (10th Cir. 2013). A sentenced female county jail prisoner brought a § 1983 action against the county and others, alleging violation of the Eighth Amendment prohibition against cruel and unusual punishment in connection with two guards' conduct of having sexual intercourse with her. The district court granted summary judgment in favor of the defendants. The prisoner appealed. The appeals court affirmed. The appeals court held that the county jail prisoner consented to engaging in sexual intercourse with the two officers, and thus, the officers' conduct could not support the prisoner's § 1983 Eighth Amendment excessive force claim. The court noted that the prisoner admitted to talking to one officer about her sexual fantasies and that she asked to have sex with him. She also admitted to allowing another officer to look at her naked, she did nothing to indicate her lack of consent when the two officers entered her cell, when they removed her clothing, or when they touched her. According to the court, there was no showing that the prisoner's mental health issues negated her ability to consent or that the officers had any knowledge of the prisoner's mental health issues. The officers had confessed and were fired immediately. (Logan County Jail, Oklahoma)</p>
<p>U.S. District Court PRISONER ON PRISONER ASSAULT</p>	<p><i>Grimes v. District of Columbia</i>, 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</p>

deliberately indifferent to a known safety risk, and thus their failure to protect the detainee from an attack by another detainee did not violate the Eighth Amendment. According to the court, there was no evidence of a history of assaults on youth at the facility, such that any facility employee knew or should have known that a fight between the detainee and another youth was going to take place, or that the youth who fought with the detainee had a history of assaultive behavior while at the facility. The court also found no evidence that a municipal custom, policy, or practice caused any such violation. The court also held that the mother's failure to designate an expert witness barred her claim. (Oak Hill Detention Facility, District of Columbia)

U.S. District Court
JUVENILES
MEDICAL CARE
WRONGFUL DEATH

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
PRISONER ON PRISONER
ASSAULT

Hill v. U.S., 922 F.Supp.2d 174 (D.Mass. 2013). A federal prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA) alleging that he was assaulted by another inmate while in custody and that a correctional officer on duty failed to respond to a "help" button and his calls for help. The United States moved to dismiss. The district court denied the motion, finding that dismissal pursuant to the FTCA's discretionary function exception was not warranted. The court found that the issue of whether BOP had any mandatory directive for immediate response to either a "help" button or inmate calls for help involved fact issues that could not be resolved on a motion to dismiss. (Federal Medical Center in Ayer, Massachusetts)

U.S. District Court
PRISONER SUICIDE
WRONGFUL DEATH

Holscher v. Mille Lacs County, 924 F.Supp.2d 1044 (D.Minn. 2013). Trustees for the next-of-kin of a pretrial detainee who committed suicide while incarcerated at a county jail brought an action against the county, alleging under § 1983 that the county provided inadequate medical care to the detainee, in violation of his due process rights. The trustees also asserted related claims for negligence and wrongful death under state law. The county moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the county had actual knowledge of the pretrial detainee's risk of suicide, as to whether the county was deliberately indifferent to that risk, and as to whether the detainee's death was the result of an unconstitutional custom. The court also held that summary judgment was precluded by genuine issues of material fact as to whether the county's training of its jail employees on proper implementation of its suicide prevention policy was adequate, as to whether the county was deliberately indifferent in failing to revise its training, and as to whether any inadequate training on the part of the county caused the pretrial detainee's suicide. (Mille Lacs County Jail, Wisconsin)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

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
SEXUAL ASSAULT

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
PRISONER ON STAFF
ASSAULT
SEXUAL ABUSE

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
SUPERVISION
PRISONER SUICIDE
MEDICAL CARE
WRONGFUL DEATH

Lemire v. California Dept. of Corrections and Rehabilitation, 726 F.3d 1062 (9th Cir. 2013). The estate, parents, and daughter of a mentally ill inmate who died in custody brought a § 1983 action against the California Department of Corrections and Rehabilitation (CDCR), CDCR officials, and prison staff. The plaintiffs sought to recover damages for alleged violations of the Eighth Amendment, based on the inmate's right to be free from cruel and unusual punishment, and the Fourteenth Amendment, based on the family's substantive due process right of familial association. The district court granted summary judgment to the plaintiffs. The appeals court affirmed in part, vacated in part, and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether: (1) withdrawal of all floor staff from a prison building which housed mentally ill inmates, for up to three and a half hours, created an objectively substantial risk of harm to the unsupervised inmates in the building; (2) the captain who called staff meetings, and a warden, who purportedly authorized the meetings, were aware of risks posed by withdrawing all floor officers from the building for over three hours; (3) any risk of harm could have been prevented with adequate supervision; and (4) the actions of the warden and the captain shocked the conscience.

The court also found genuine issues of material fact existed as to whether (1) floor officers who were the first prison personnel to arrive in the cell of the mentally ill inmate who apparently committed suicide were deliberately indifferent to the inmate's serious medical needs when they failed to provide cardiopulmonary resuscitation (CPR), despite being trained to administer it; (2) the officers' failure to provide medical care caused the inmate's death; and (3) the officers' actions shocked the conscience, precluding summary judgment as to the § 1983 Eighth Amendment medical claim brought by the inmate's family against officers and family's substantive due process claim against the officers. (California State Prison at Solano)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Lucia v. City of Peabody, 971 F.Supp.2d 153 (D.Mass. 2013). The administrator of the estate of an individual who died from acute and chronic substance abuse while in protective custody brought an action against a city and its mayor, as well as the police department, its chief, and four other individual officers, alleging claims under § 1983 for various constitutional violations and claims of negligence and false imprisonment under state law. The defendants moved for summary judgment. The district court granted the motion. The district court held that: (1) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to call a treatment center; (2) the officers were entitled to qualified immunity on the claim that they violated the individual's constitutional rights by failing to monitor him and provide proper care; (3) the administrator failed to establish municipal liability based on failure to train; (4) the administrator failed to establish supervisory liability against the supervising officer; (5) police were immune from negligence liability under statutory exception to Massachusetts Tort Claims Act; and (6) the officers were not liable for false imprisonment. The court noted that at the time of the relevant events, a reasonable officer would not have known that determining that a suitable treatment facility was not available was a Fourth Amendment prerequisite to his ability to constitutionally detain an intoxicated individual who was not charged with any crime, as required for the right to be clearly established, and therefore the individual officers who detained the individual were entitled to qualified immunity under § 1983. (Peabody Police Department, Massachusetts)

U.S. District Court
MEDICAL CARE
USE OF FORCE
WRONGFUL DEATH

Maraj v. Massachusetts, 953 F.Supp.2d 325 (D.Mass. 2013). The estate of a deceased inmate brought a § 1983 excessive-force action against county corrections officers and others, alleging that they used excessive force and were deliberately indifferent to the inmate's medical needs, in violation of the Constitution. The district court partially granted the defendants' motions to dismiss and the defendants moved for summary judgment. The district court granted the motion. The defendants allegedly caused the inmate's death by using an emergency restraint belt and delaying medical treatment, but a prison medical examiner determined that the inmate had a pre-existing heart condition that ultimately led to the inmate's cardiac arrest, and the manner of death could not be determined. (Suffolk County House of Correction, Massachusetts)

U.S. District Court
TRANSPORTATION

McKinney v. U.S., 950 F.Supp.2d 923 (N.D.Tex. 2013). A 79-year-old federal prisoner, who allegedly had been injured while being transported to a medical center, filed suit against the United States pursuant to the Federal Torts Claim Act (FTCA). The district court denied the defendants' motion to dismiss, holding that the prisoner's tort claim was not barred under the discretionary function exception to FTCA's waiver of sovereign immunity. The court noted that a prisoner has the right to bring a cause of action under FTCA for a breach of the duty prescribed by federal statute requiring the Bureau of Prisons to provide for the safekeeping, care, and subsistence of all federal prisoners. The prisoner alleged that he was injured when officials failed to assist him on stairs when he was exiting an airplane, while he was fully restrained in handcuffs, shackles, and a belly chain. According to the court, there were no legitimate policy considerations at play in the officials' choice not to assist a fully restrained, elderly, ill, and outnumbered prisoner on the stairs of an airplane. The prisoner alleged that, due to his fall, he suffered intense pain, has reoccurring medical issues, must now use a walker to get around, continues to need medication for pain, and requires counseling to address the mental and emotional stress he has suffered. (FCI-Fort Worth, Texas, and Federal Medical Center, Butner, North Carolina)

U.S. District Court
MEDICAL CARE
USE OF FORCE
OFFICER ON PRISONER
ASSAULT

M.H. v. County of Alameda, 90 F.Supp.3d 889 (E.D. Cal. 2013). Children of a deceased inmate brought a § 1983 action against a doctor, a nurse, prison health services, a county, a sheriff, ten deputies, and a county social worker. The inmate died from anoxic encephalopathy due to cardiac arrest following excessive physical exertion, multiple blunt injuries, and taser, which occurred while he was incarcerated, and while he was experiencing severe alcohol withdrawal. The defendants moved to dismiss. The district court granted the motions in part and denied in part. The court held that the children sufficiently stated a claim under California law that the nurse was deliberately indifferent to the inmate's medical needs, by alleging that the nurse knew that the inmate was at risk of severe alcohol withdrawal, violated prison and county procedure in failing to attend to his medical needs, and failed to satisfy the medical standard of care, which resulted in substantial harm to the inmate. According to the court, the children also stated valid *Monell* claims by alleging that the doctor's and the prison health services corporation's customs, practices, or lack thereof, constituted deliberate indifference to the prisoners' medical needs, and also stated a claim for supervisory liability. The inmate had broken a food tray in his cell, blocked his toilet, and made a mess of his cell. A deputy allegedly entered his cell alone with a taser in one hand and handcuffs in the other. The deputy tased the inmate for two cycles, or ten seconds, causing the inmate to run for the door, slip on the wet floor, and fall. The children alleged that the deputy and at least nine other deputies then severely beat, punched, kicked, stomped, tased, and brutalized the inmate. The inmate was taken to a hospital where he was found to suffer anoxic brain damage, severe acidosis, several cardiac arrests, and respiratory failure. The inmate died two days later. An autopsy determined that the inmate died from anoxic encephalopathy due to cardiac arrest following excessive physical exertion, multiple blunt injuries, and taser. (Corizon Health Inc, and Santa Rita Jail, Alameda County Sheriffs' Department, California)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Morris v. Dallas County, 960 F.Supp.2d 665 (N.D.Tex. 2013) The parents of a detainee who died while in custody at a county jail brought a § 1983 action in state court against the county, the county jail medical staff, and officials, alleging violation of the Americans with Disabilities Act (ADA) and constitutional violations. The action was removed to federal court. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment for the defendants was precluded by fact issues with regard to: (1) the nurses who were defendants; (2) the claim that the county failed to monitor the detainee's health; and (3) failure to train officers on how to observe and assess the jail detainees' medical needs and respond to those needs. The court noted that the way the jail infirmary was structured, including the lack of direct access between the detainees and the nursing staff, and the absence of procedures for communication between the nurses and the correctional officers concerning emergent medical symptoms, were a county custom. According to the court, whether that custom was adopted or continued, even though it was obvious that its likely consequence would be a deprivation of medical care for the detainees, precluded summary judgment in favor of the county in the § 1983 deliberate indifference claim brought against the county. (Dallas Co. Jail, Tex.)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE
WRONGFUL DEATH

Moses v. Westchester County Dept. of Corrections, 951 F.Supp.2d 448 (S.D.N.Y. 2013). The estate of a deceased prisoner brought a § 1983 action against a county, its department of corrections (DOC), and a corrections officer, alleging state and federal claims after the prisoner was beaten by the officer. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the family exercised reasonable diligence in pursuing the action, as required to equitably toll the limitations period for the § 1983 action. The estate alleged that the corrections officer "kicked and stomped" on the prisoner's head, causing injuries that eventually led to his death. The officer was indicted in county court for assault and the Federal Bureau of Investigations opened an investigation into allegations that the officer had used excessive force against the prisoner. The officer was eventually convicted of reckless assault. The prisoner's death also prompted a federal investigation into conditions at the jail, and investigators found a number of instances of the use of excessive force by jail staff, a failure to provide an adequate review system, and a failure to provide adequate mental and medical health care. (Westchester Department of Corrections, New York)

U.S. District Court
SEXUAL ASSAULT

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 Corr'l. Facility, Corrections Corp. of America)

U.S. District Court
BRUTALITY
MEDICAL CARE
PRISONER ON PRISONER
ASSAULT
SUPERVISION
THREATS
SUICIDE ATTEMPT

Randle v. Alexander, 960 F.Supp.2d 457 (S.D.N.Y. 2013). An African-American state inmate with a history of serious mental illness brought an action against officials of the New York State Department of Corrections and Community Supervision (DOCCS), correctional officers, and mental health personnel, alleging under § 1983 that the defendants were deliberately indifferent to his serious medical needs and that he was retaliated against, in violation of his First Amendment rights, among other claims. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court held that the correctional officers' alleged actions in forcing the inmate to fight a fellow inmate, and threatening to beat the inmate with a baton and engage in a joint cover-up if the two inmates did not "finish" their fight within a specified area of the prison, which ultimately resulted in the fellow inmate sustaining fatal injuries in the fight, had no legitimate penological purpose, and was far afield of the species of force employed to restore or maintain discipline. The court held that the alleged actions reflected indifference to inmate safety, if not malice toward the inmate, as supported the inmate's § 1983 Eighth Amendment failure to protect claim.

According to the court, the alleged forced fight between the inmate and a fellow inmate, orchestrated, condoned, and covered up by correctional officers was an objectively serious violation of the inmate's Eighth Amendment right to reasonably safe conditions of confinement, and the intent evinced by such activity was, at the very least, one of indifference to inmate safety, supporting the inmate's § 1983 Eighth Amendment conditions of confinement claim against the officers. The court held that the African-American state inmate's allegations in his complaint that a correctional officer arranged inmates in his company so that white inmates were close to officers' posts, whereas black inmates were placed further away, that white inmates were given superior jobs, that the officer's efforts in forcing a fight between the inmate and a fellow inmate were done purposefully for his amusement because both inmates were black, and that the officer's treatment of the inmate and other black inmates was motivated by his intent to discriminate on the basis of race and malicious intent to injure inmates, stated a § 1983 equal protection claim against the officer.

The court ruled that the correctional officers were not entitled to qualified immunity from the inmate's § 1983 Eighth and Fourteenth Amendment claims because inmates had a clearly established right to remain incarcerated in reasonably safe conditions, and it was objectively unreasonable to threaten inmates until they agreed to fight each other in front of prison officials. The court found that the inmate stated an Eighth Amendment inadequate medical care claim against mental health personnel. The inmate alleged that he had a history of serious mental illness, that his symptoms increased following a forced fight with a fellow inmate, that the inmate attempted suicide on three occasions, two of which required his hospitalization, that prison mental health personnel evidenced deliberate indifference to his medical needs, as they recklessly disregarded the risk the inmate faced as result of special housing unit (SHU) confinement, and that the inmate was confined to SHU despite a recommendation that he be placed in a less-restrictive location. (Green Haven Correctional Facility, Protective Custody Unit, New York State Department of Corrections)

U.S. District Court
MEDICAL CARE
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Robinson v. Phelps, 946 F.Supp.2d 354 (D.Del. 2013). A state prisoner brought a § 1983 action against prison officials alleging excessive force and failure to protect. The district court held that the prisoner stated cognizable and non-frivolous claims for excessive force, failure to protect, and denial of medical care. The prisoner alleged that on one occasion a sergeant assaulted him and that a lieutenant arrived during the assault and that he sustained injuries but was denied medical care by these officers and other prison personnel, that another sergeant shoved and pushed him when he was taken to a medical grievance hearing, making his injuries worse, that this sergeant shoved him to the ground while escorting him to the shower, and then dragged him when he could not get up, requiring that he be taken away by stretcher, and that other officers later choked him until he lost consciousness. The court found that the prisoner also stated cognizable and non-frivolous Eighth Amendment claims against a prison physician for denial or delay of medical treatment; the prisoner alleged that after he was assaulted by a corrections officer, he was seen by the physician, who would not prescribe pain medication and advised the prisoner that he would be x-rayed within seven to ten days, but the x-rays were not taken for a month and a half, and he alleged that some months later he was taken to an outside facility for a magnetic resonance imaging (MRI) of the neck and back. According to the court, the prisoner's allegations were sufficient to state an Eighth Amendment claim that the physicians denied his requests for medically necessary accommodations. The prisoner alleged that medical officials did not authorize his housing on a lower bunk and, as a result, he slept on the floor, that an officer later moved him to an upstairs cell even though he knew that the prisoner required lower housing due to his neck and back injuries, and that the prisoner showed the officer a memo from a superior officer indicating the prisoner needed the housing, (James T. Vaughn Correctional Center, Delaware)

U.S. Appeals Court
MEDICAL CARE
TRANSPORTATION

Rogers v. Boatright, 709 F.3d 403 (5th Cir. 2013). A state prisoner brought a § 1983 action against corrections officers and their supervisor, alleging that he was seriously injured when the prison van in which he was riding stopped abruptly, and that he was provided with inadequate and untimely medical care for his injuries. The district court dismissed the suit. The prisoner appealed. The appeals court affirmed in part, reversed in part, and

remanded. The appeals court held that the prisoner stated a non-frivolous claim that an officer acted with deliberate indifference to his safety in violation of the Eighth Amendment. The prisoner alleged that he sustained a serious injury while being transported in a prison van because a corrections officer operated the van recklessly and had to brake suddenly to avoid hitting another vehicle, that he was shackled in leg irons and handcuffs and was not provided with a seatbelt and thus could not protect himself when the prison van stopped abruptly, and that the officer had told another officer that other inmates similarly had been injured the prior week and during other incidents. A dissenting appeals judge asserted that "...there is no constitutional requirement that inmates be buckled with seatbelts during transportation. Nearly all courts have rejected such claims, because the use of seatbelts on shackled prisoners presents inevitable, non-trivial security concerns for other passengers and the guards." The appeals court held that the corrections officers transporting the prisoner to a hospital in a prison van did not show deliberate indifference to the prisoner's serious medical needs, in violation of the Eighth Amendment, when, after the prisoner was injured, the officers proceeded to the hospital, had the prisoner checked by a physician, but then failed to take the prisoner to the emergency room for treatment of his bleeding wounds as that physician had directed, but instead brought the prisoner to the prison's medical facility, where he was treated some five hours later. (Eastham Unit of the Texas Department of Criminal Justice, Correctional Institutions Division)

U.S. Appeals Court
INTIMIDATION
THREATS
USE OF FORCE

Santiago v. Blair, 707 F.3d 984 (8th Cir. 2013). A state prisoner brought a § 1983 action against correctional officers, alleging excessive force and deliberate indifference to his medical needs in violation of the Eighth Amendment and retaliation in violation of the First Amendment. The district court granted the officers' motion for summary judgment with respect to official capacity claims, but denied summary judgment with respect to individual capacity claims. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the district court improperly applied the Fourth Amendment excessive force legal standard to the prisoner's § 1983 claim for excessive force in violation of the Eighth Amendment, warranting remand to the district court to inquire whether the force was applied to the prisoner in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.

The appeals court held that summary judgment in prisoner's First Amendment retaliation action was precluded by a genuine dispute of material fact as to whether a correctional officer's threats of death would chill a prisoner of ordinary firmness from engaging in the prison grievance process. The court also found a genuine dispute of material fact as to whether the correctional officer issued death threats to the prisoner because the prisoner had filed and pursued an excessive force grievance.

According to the court, summary judgment in the First Amendment retaliation action was precluded by a genuine dispute of material fact as to whether the correctional officer's placement of the prisoner in a cell without his personal property, proper facilities, bedding, or clothing, and the officer's threat that things would get worse, issued after hearing the prisoner complain that he was being retaliated against, were adverse actions sufficient to chill a prisoner of ordinary firmness from engaging in the prison grievance process. (Potosi Correctional Center, Missouri)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT

Schultz v. Pugh, 728 F.3d 619 (7th Cir. 2013). A state prisoner brought a civil rights action against prison officials, claiming he had been retaliated against for speaking up about an assault that he alleged had been made upon him by two prison guards. The district court dismissed, and the prisoner appealed. The appeals court affirmed. The court held that the prisoner's failure to exhaust administrative remedies by not filing a grievance that conformed to prison rules barred his action. The prisoner claimed that he was afraid to file a grievance because the retaliation included a prohibition against speaking about the alleged assault. (Chippewa Valley Correctional Treatment Facility, Wisconsin)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

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

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Sours v. Big Sandy Regional Jail Authority, 946 F.Supp.2d 678 (E.D.Ky. 2013). The administrator of a detainee's estate filed a § 1983 action against jail officials alleging deliberate indifference to the detainee's serious medical needs, negligence, and violation of state regulations. The officials moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the nurse, a deputy jailer, and the center's administrator were not deliberately indifferent to the detainee's serious medical

needs; (2) the nurse's determination that the detainee did not need insulin "right away" was a discretionary decision for which she was entitled to qualified official immunity; (3) the nurse was not entitled to qualified official immunity for her alleged failure to leave adequate instructions to deputy jailers for the care of the detainee; and (4) the jailers were entitled to qualified official immunity. The court noted that, under Kentucky law, the detention center nurse's duty to ensure that the diabetic pretrial detainee could be cared for in her absence was mandatory and ministerial, and thus the nurse was not entitled to qualified official immunity in the wrongful death action brought by the administrator, for her alleged failure to leave adequate instructions for deputy jailers for the care of the detainee. According to the court, the nurse was aware that the jailers were unlikely to be able to identify the symptoms of diabetic ketoacidosis and that there was no information in the detention center about diabetes. *On appeal*, the court affirmed in part and reversed in part. The appeals court held that the nurse was not entitled to qualified immunity. (Big Sandy Regional Detention Center, Kentucky)

U.S. District Court
OFFICER ON
PRISONER ASSAULT
SUPERVISION

Spicer v. District of Columbia, 916 F.Supp.2d 1 (D.D.C. 2013). A prisoner in the District of Columbia detention center brought an action against correctional officers and a supervisor, alleging that he was assaulted by the officers while in custody. The supervisor moved to dismiss, and the defendants moved for partial judgment on the pleadings. The district court denied the supervisor's motion and granted the defendant's motion. The court held that allegations by the prisoner that the supervising lieutenant was negligent in failing to adequately supervise the other correctional officers who allegedly assaulted the prisoner and that due to the lack of adequate supervision, the officers attacked the prisoner and broke his foot, stated a negligent supervision claim against the lieutenant. (Central Detention Facility, District of Columbia)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

Stone v. Caswell, 963 F.Supp.2d 32 (D.Mass. 2013). A state prisoner brought a § 1983 action against a correctional officer, a sergeant, a captain, and the Massachusetts Department of Correction (DOC) officials, alleging that the defendants violated his state and federal civil rights while he was in their custody. The officials moved to dismiss. The district court granted the motion in part and denied the motion in part. The court held that the prisoner stated a claim against DOC officials, a sergeant, and a captain for supervisor liability under § 1983. According to the court, even though they did not participate in the underlying constitutional violation—a correctional officer's alleged use of excessive force against the prisoner-- the prisoner alleged that they caused his constitutional rights to be violated by inadequately training and supervising the correctional officer. The prisoner was being held in a cell at a local court when a DOC transportation officer asked about a pair of sneakers located in the prisoner's cell. The prisoner responded that the sneakers did not belong to him. The officer then entered the prisoner's cell, pointed his finger in prisoner's face, grabbed him, forced him into a sitting position and, later, forced him to the ground of the lock-up corridor. (Massachusetts Department of Correction)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Thompson v. King, 730 F.3d 742 (8th Cir. 2013). The estate of a detainee, who died in police custody from multiple drug intoxication, brought a § 1983 action against the arresting and detaining officers, alleging that the officers had shown deliberate indifference to the detainee's serious medical needs. The district court denied the officers' motion for summary judgment on the basis of qualified immunity. The officers appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that the arresting officer's discovery of an empty bottle of a recently refilled anti-anxiety medication, and the detainee's statement that he had taken "a little" of the medication, did not amount to subjective knowledge that the detainee required medical attention, and thus the officer was entitled to qualified immunity in the § 1983 action arising from the subsequent death of the detainee in police custody. The court noted that the detainee presented no external injuries, and the detainee was conscious during the initial encounter, answering officers' questions and following instructions. The court found that summary judgment for the police officer in charge of the jail was precluded by a genuine issue of material fact as to whether the police officer had subjective knowledge of the serious medical need of the detainee and whether the officer deliberately disregarded that need. According to the court, a reasonable officer in charge of a jail would have known that a constitutional violation occurs by deliberately disregarding a detainee's serious medical needs, and thus the right was clearly established, and in turn the officer was not entitled to qualified immunity from the § 1983 claim arising from detainee's death while in police custody. (Saline County Detention Center, Arkansas)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

U.S. v. McQueen, 727 F.3d 1144 (11th Cir. 2013). After a state prison sergeant was convicted of conspiring to deprive several inmates of their right to be free from cruel and unusual punishment, and for obstruction of justice, and a state prison corrections officer was convicted of obstruction of justice, the district court denied the sergeant's motion for a new trial, and denied the corrections officer's motion for judgment of acquittal or in the alternative, for a new trial, and they appealed. The court affirmed in part, vacated in part, and remanded. The court held that evidence was sufficient to establish an illegal agreement among the sergeant and others to violate the civil rights of numerous inmates, and that any error by the government in improperly bolstering the credibility of a witness did not warrant reversal. The court held that the prison officers' sentences were substantively unreasonable because the district court varied downward from the bottom of the Sentencing Guideline range by more than 90%. The court noted that the sergeant had brutalized more than five young prisoners and then lied about it, and the corrections officer intentionally sought to conceal those serious crimes. Evidence showed that a law enforcement officer, in the sergeant's presence, beat one inmate around the hands with a broomstick when the inmate refused to offer the name of another prisoner who had engaged in a fight, and despite the sergeant's obligation to intervene the sergeant did nothing. The evidence also revealed that the sergeant, in the presence of other officers, assaulted another inmate who had been involved in a prison fight, beating him with a broken broomstick and throwing him to the ground, when the prisoner refused to disclose the name of the inmate with whom he had been fighting. (South Florida Reception Center)

U.S. District Court SEXUAL ASSAULT USE OF FORCE	<i>Valade v. City of New York</i> , 949 F.Supp.2d 519 (S.D.N.Y. 2013). Arrestees brought § 1983 and state law actions against police officers and a city. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment on the Fourth Amendment excessive force claim was precluded by genuine issues of material fact as to whether a police officer used excessive force against the arrestee by handcuffing her too tightly and shoving her into a police car. The court also found a genuine issue of material fact as to whether the arrestee was sexually assaulted while she was in police custody following her arrest. (New York City Police Department, Central Booking)
U.S. Appeals Court OFFICER ON PRISONER ASSAULT	<i>Wilkins v. Gaddy</i> , 734 F.3d 344 (4 th 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. District Court THREATS SEXUAL ASSAULT	<i>Williams v. Community Solutions, Inc.</i> , 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 PRISONER ON PRISONER ASSAULTS PROTECTION FROM HARM	<i>Williams v. Wahner</i> , 731 F.3d 731 (7 th 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 MEDICAL CARE PROTECTION FROM HARM	<i>Withers v. Wexford Health Sources, Inc.</i> , 710 F.3d 688 (7 th Cir. 2013). A prisoner brought a § 1983 action against a variety of health professionals employed by or under contract to a state prison, alleging deliberate indifference to his medical needs in violation of the Eighth Amendment. The district court granted the defendants’ motion for summary judgment and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that a genuine issue of material fact existed as to whether a nurse who allegedly let the prisoner who was suffering from back pain to climb a ladderless bunk bed, resulting in his fall from the bunk bed, was deliberately indifferent to the prisoner’s medical needs, precluding summary judgment. (Danville Correctional Center, Illinois)
2014	
U.S. Appeals Court PRISONER ON PRISONER ASSAULT	<i>Albino v. Baca</i> , 747 F.3d 1162 (9 th Cir. 2014). 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 and then the court granted a rehearing en banc. The appeals court then reversed and remanded. The court held that administrative remedies at the jail were not available within meaning of the Prison Litigation Reform Act (PLRA), and therefore the detainee satisfied his exhaustion requirement. (Los Angeles County Men’s Central Jail, California)
U.S. District Court MEDICAL CARE WRONGFUL DEATH	<i>Awalt v. Marketti</i> , 74 F.Supp.3d 909 (N.D.Ill. 2014). The estate and the widow of a pretrial detainee who died in a county jail brought civil rights and wrongful death actions against jail personnel and medical care providers who serviced the jail. The county defendants and the medical defendants moved for summary judgment. The district court held that: (1) the evidence was sufficient for a reasonable juror to find that the correctional officers and a jail superintendent were deliberately indifferent to the detainee’s medical needs; (2) summary judgment was precluded by genuine issues of material fact as to whether the officers knew that the detainee was suffering seizures while in jail and failed to take appropriate action; (3) a reasonable juror could have found that neither a

physician nor a nurse made a reasoned medical judgment not to prescribe a particular anti-seizure drug for the detainee; and, (4) in the Seventh Circuit, private health care workers providing medical services to inmates are not entitled to assert qualified immunity. The court also found that summary judgment was precluded by genuine issues of material fact: (1) concerning whether failure of the sheriff's office and the jail's medical services provider to provide adequate medical training to correctional officers caused the detainee's death; (2) as to whether the sheriff's office and the jail's medical services provider had an implicit policy of deliberate indifference to medical care provided to detainees; (3) regarding whether correctional officers knew that the detainee was suffering seizures and ignored his suffering; (5) as to whether the decision of the sheriff's office and the jail's medical services provider not to implement a standardized grievance mechanism led to a widespread practice at the jail of ignoring or delaying response to grievances and medical requests made by detainees, and as to whether this failure was the moving force behind the pretrial detainee's seizure-related death; and (6) as to whether the sheriff's office and the jail's medical services provider had an express policy that prevented a nurse from restocking a particular medication until there were only eight pills left in stock and whether that policy was the moving force behind the pretrial detainee's seizure-related death. The court denied qualified immunity from liability to the correctional officers and the sheriff's office. (Grundy County Jail, Ill.)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Awalt v. Marketti, 75 F.Supp.3d 777 (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 action against the county, jail personnel, the medical services contractor, and the contractor's employees. Individual defendants moved to separate their cases from the claims against the county and the contractor. The district court granted the motion, finding that the potential for unfair prejudice warranted the separation. (Correctional Health Companies, Inc., Health Professional, Ltd., Grundy County Jail, Illinois)

U.S. Appeals Court
SUICIDE

Barkes v. First Correctional Medical, Inc., 766 F.3d 307 (3rd Cir. 2014). The widow and children of a deceased inmate brought a § 1983 action against various administrators, including the commissioner of a state department of corrections (DOC) and a warden, and the private company that contracted with the DOC to provide medical services to prisons, alleging violations of the Eighth Amendment. The district court granted the defendants' motion for summary judgment, denied the plaintiffs' motion for reconsideration, and denied the parties' motions for summary judgment. The administrators appealed. The appeals court affirmed. The court held that: (1) an inmate's right to proper implementation of adequate suicide prevention tools was clearly established; (2) summary judgment was precluded by a genuine issue of material fact as to whether the policies of the company created an unreasonable risk of constitutional deprivation that was exacerbated by the supervision of the warden and the commissioner; and (3) a genuine issue of material fact existed as to whether the inmate's suicide was caused by failure to supervise the private company that contracted with the DOC to provide medical services. (Howard R. Young Correctional Institution, Delaware, and First Correctional Medical, Inc.)

U.S. District Court
TRANSPORTATION

Best v. New York City Dept. of Correction, 14 F.Supp.3d 341 (S.D.N.Y. 2014). A pretrial detainee filed a § 1983 action alleging that state prison officials denied him due process at an infraction hearing, improperly placed him in segregated housing, and failed to protect him while being transported to court. The officials moved to dismiss. The district court granted the motion in part and denied in part. The court held that the issues of whether the detainee's placement in segregated housing following the infraction hearing was administrative or punitive in nature, and whether he was provided the opportunity to call a witnesses at a hearing involved fact issues that could not be resolved on a motion to dismiss the detainee's claim that prison officials' denied him procedural due process at the hearing. According to the court, the officials' failure to provide the detainee with a seat belt while he was being transported to court with his hands handcuffed behind his back did not demonstrate deliberate indifference to the detainee's safety. Plaintiff alleges that, sometime after he was placed in segregated housing, "while being transported to court, handcuffs [were] placed behind [Plaintiff's] back and [he was] "placed in a cage with no seatbelt or a way to protect [himself] in case of a sudden stop or accident." and that, "while riding, [he sat] on a slippery seat that cause[d] [him] to continuously slide." According to the detainee, "On [his] way to court, the bus kept stopping short and [Plaintiff] continued to bump [his] head on the gate in front of [him]." The detainee complained to the driver and after he returned to the detention facility he was taken to the medical center where his injuries were assessed and an injury report was filed. The detainee claims that, as a result of the injuries that he sustained during this trip, his neck and shoulders were injured, and that "he now has to take medication for migraine headaches. (Metropolitan Detention Center, Brooklyn, New York)

U.S. Appeals Court
SUICIDE
MEDICAL CARE

Cady v. Walsh, 753 F.3d 348 (1st Cir. 2014). Following her son's death from self-inflicted injuries in a county jail, the mother of a pretrial detainee brought an action under § 1983 against employees of a private healthcare services provider, alleging deliberate indifference to the detainee's health in violation of the Due Process Clause. The provider's employees moved for summary judgment based on qualified immunity. The district court denied the motion and the employees appealed. The appeals court affirmed, finding that the employees failed to raise a purely legal challenge, depriving the court of jurisdiction. (Cumberland County Jail, Corizon Inc., Maine)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Caldwell v. Warden, FCI Talladega, 748 F.3d 1090 (11th Cir. 2014). A federal prisoner who was assaulted and stabbed by his cellmate filed a pro se Bivens action against federal corrections officers, alleging deliberate indifference to a substantial risk of serious harm. The district court granted summary judgment in favor of the officers. The prisoner appealed, and counsel was appointed to represent prisoner. The appeals court vacated and remanded, finding that fact issues precluded summary judgment, and that the officers were not entitled to qualified immunity. The court found a genuine issue of material fact as to whether the federal prison officers had actual subjective knowledge that the federal prisoner faced a substantial risk of serious harm from the cellmate, who had a known history of violence, before the officers placed the prisoner in the cell with the cellmate, where he was assaulted and stabbed. The court noted that they had a known history of violence and had already threatened the prisoner's safety by setting their locked cell on fire. (FCI-Talladega, Alabama)

U.S. District Court
SEXUAL ASSAULT
SUPERVISION

Castillo v. Bobelu, 1 F.Supp.3d 1190 (W.D.Okla. 2014). Five female inmates brought a § 1983 action against state officials and employees, alleging they were subjected to sexual abuse while working outside a community corrections center in which they were housed, in violation of the Eighth Amendment. The inmates were participating in the Prisoner Public Works Program ("PPWP") that allowed offenders to work off-site at different state offices. They were working during the day doing grounds maintenance at the Oklahoma Governor's Mansion, where they were supervised by a groundskeeper and his immediate supervisor. When inmates work at places such as the Governor's Mansion, the DOC does not have a guard stay with the women at the work site. Instead, they are supervised by state workers employed at the work site, who function like guards. These individuals go through an eight hour training program. The inmate claimed that they were sexually harassed and sexually assaulted by the groundskeeper and by a cook employed at the Governor's Mansion. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to (1) whether prison guards were deliberately indifferent. The court held that: (1) the prison district supervisor did not have knowledge of a substantial risk of harm to the inmates because the supervisor did not know that the inmates were working only with males while off-site; (2) the supervisor was not deliberately indifferent; (3) the prison supervising case manager was not deliberately indifferent; and (4) there was no evidence that the employee had supervisory authority over the inmate. The court noted that the inmate did not return to the work assignment where she was allegedly abused by state employees or have contact with the alleged abusers, as required for the continuing violation doctrine to apply to her § 1983 action that alleged violations of the Eighth Amendment. According to the court, despite the supervisor being aware of misconduct by a groundskeeper under his supervision, the supervisor was aware that the groundskeeper violated certain policies, but did not have knowledge of the sexual assaults, and he investigated the groundskeeper's conduct and counseled the groundskeeper. The court also found that the prison supervising case manager, who oversaw the off-site public works program, was not deliberately indifferent to the excessive risk of sexual assaults of female inmates working at the governor's mansion as part of the program, where the inmates did not complain to the manager and the manager was never informed of misconduct. (Hillside Community Corr. Ctr., Oklahoma City, Oklahoma)

U.S. District Court
SEXUAL ASSAULT
THREATS

Cox v. Massachusetts Dept. of Correction, 18 F.Supp.3d 38 (D.Mass. 2014). A mentally disabled state prisoner brought an action against a state department of correction (DOC) and various officials, alleging violations of the Eighth and Fourteenth Amendments, Americans with Disabilities Act (ADA), and Massachusetts Declaration of Rights. The defendants moved to dismiss. The district court granted the motion in part and denied in part. The court found that the prisoner's grievance alleging he was improperly classified, resulting in a sexual assault, provided the DOC with sufficient notice to investigate, and therefore, the prisoner's claims under the Americans with Disabilities Act (ADA) were administratively exhausted. The prisoner alleged that the DOC did not keep him safe and that he was mentally challenged. According to the court, the prisoner's allegations that he was sexually assaulted by other inmates, that he suffered other abuses, that prison officials knew of the risk of harm to the prisoner, that his history of mental illness was well-documented, and that officials were responsible for policies, procedures, and training that led to his injury were sufficient to state a § 1983 claim against the officials for violations of the Eighth Amendment, and a claim under the Massachusetts Civil Rights Act, absent allegations of threats, intimidation, or coercion by officials. The court held that the prisoner's allegations that prison officials knew of his disability, that medical professionals encouraged staff to provide appropriate housing to prevent the prisoner from being targeted by other inmates, and that he was sexually assaulted after failure to provide appropriate housing were sufficient to state a failure to accommodate claim under the Americans with Disabilities Act (ADA). (Massachusetts Department of Correction, Old Colony Correctional Center)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
SUPERVISION

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

U.S. Appeals Court
USE OF FORCE

Edwards v. Byrd, 750 F.3d 728 (8th Cir. 2014). Pretrial detainees in a county jail brought a § 1983 action against the county, county sheriff, and jail guards, alleging use of excessive force, failure to protect, and other constitutional violations. The district court denied, in part, the sheriff's and guards' motion for summary judgment based on qualified immunity. The sheriff and a guard appealed. The appeals court affirmed in part and reversed in part. The court found that the guards were not entitled to qualified immunity for their alleged conduct in employing a flash-bang grenade in pretrial detainees' cell, kicking the detainees, and shooting them with bean-bag guns. According to the court, immediately before the guards entered the cell, the detainees were allegedly submissive, lying face-down, which the guards could allegedly see through the cell door, and the detainees allegedly did not resist or otherwise act aggressively, and, at the time of the incident, it was clearly established that such conduct would violate due process. The court held that the sheriff could not be liable where it was undisputed that the sheriff was not present during the alleged incident. (Falkner Co. Detention Center, Arkansas)

U.S. District Court
MEDICAL CARE
WRONGFUL DEATH

Endl v. New Jersey, 5 F.Supp.3d 689 (D.N.J. 2014). The parents of an inmate who died in a state prison brought a § 1983 action, individually and the mother as administrator of the inmate's estate, against the state, the department of corrections (DOC), a prison, corrections officers, a medical care provider, and physicians and nurses, alleging the inmate had been deprived of necessary medical care. The defendants filed motions to dismiss. The district court granted the motions in part and denied in part. The court held that corrections officers, who were sued in their official capacities, were not immune from liability under the New Jersey Tort Claims Act (TCA) where there were not just errors in medical judgment, but claims of deliberate or reckless indifference, and the survivors' clearly alleged conduct that may have been outside the scope of the officers' employment or that may have constituted willful misconduct. The court found that allegations that individual medical providers responsible for the inmate misdiagnosed the inmate's congestive heart failure as bronchitis, failed to provide a medical workup following the inmate's complaint of chest cavity pain, and failed to properly medicate him, were sufficient to support an Eighth Amendment claim for cruel and unusual punishment in the § 1983 action against the providers. (Northern State Prison, New Jersey)

U.S. Appeals Court
WRONGFUL DEATH
MEDICAL CARE
USE OF FORCE

Estate of Booker v. Gomez, 745 F.3d 405 (10th Cir. 2014). The estate of deceased pretrial detainee who died while in custody after officers restrained him in his response to his alleged insubordination, brought a § 1983 action in state court against the deputies and a sergeant, alleging excessive force, deprivation of life without due process, and failure to provide immediate medical care. Following removal to federal court, the district court denied the defendants' motion for summary judgment on qualified immunity grounds. The defendants appealed. The appeals court affirmed. The appeals court held that the detainee's right to be free from excessive force, including use of a neck restraint, stun gun, and pressure on his back while he was on his stomach and not resisting, was clearly established, for purposes of determining whether the deputies and sergeant were entitled to qualified immunity. According to the court, a reasonable officer would know that failing to check a pretrial detainee's vital signs or provide immediate medical attention after he was rendered unconscious by the use of force, which allegedly included at least a two-minute neck hold, 140 pounds of pressure on his back, and the use of stun gun for eight seconds, was deliberate indifference. (Downtown Detention Center, Denver, Colorado)

U.S. District Court
SUICIDE
SUPERVISION

Estate of Schroeder v. Gillespie County, 23 F.Supp.3d 775 (W.D.Tex. 2014). The estate of a deceased pretrial detainee brought a § 1983 action against a county, its sheriff, the sheriff's department, and a jailer, alleging violations of the 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: (1) the sheriff's department did not have the legal capacity to engage in litigation separate from the county; (2) the detainee's right not to be subjected to deliberate indifference by prison officials while they had a subjective knowledge of a risk of serious harm to the detainee that was clearly established; (3) the jailer's conduct was objectively reasonable; and (4) genuine issue of material fact existed as to whether the county's policies were the moving force behind the alleged constitutional violation. According to the court, the jailer's conduct in relation to the pretrial detainee, who the jailer was aware was suicidal, was objectively reasonable, and therefore, the jailer was entitled to qualified immunity. The detainee committed suicide using his socks. The jailer was aware that the detainee had torn a piece of a blanket and tied it to a fixture in his cell in what was interpreted by on duty officers as a suicide attempt, which led to the detainee's being put on 15 minute suicide watch. The jailer continued that watch when he came on duty, following existing policies. The jailer was not aware that the detainee still had his socks, and the jailer immediately cut the detainee down upon discovering detainee had hanged himself, called for help, and attempted to resuscitate the detainee. (Gillespie County Jail, Texas)

U.S. District Court
SUICIDE

Estate of Stevens ex rel. Collins v. Board of Com'rs. of County of San Juan, 53 F.Supp.3d 1368 (D.N.M. 2014). The estate of a county jail detainee who committed suicide while in custody brought a § 1983 action against county officials, county jail officers, and the healthcare provider that contracted with the county jail. The healthcare provider filed a partial motion to dismiss. The district court converted it to a motion for judgment on the pleadings, and granted the motion. According to the court, the estate failed to isolate the allegedly unconstitutional acts of each defendant, and thus did not provide adequate notice as to the nature of the claims against each, where the complaint generally used the collective term "defendants" and failed to differentiate between unnamed jail officers and unnamed employees of the healthcare provider when discussing the alleged wrongful action or inaction. (San Juan County Adult Detention Center, New Mexico)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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

U.S. Appeals Court
MEDICAL CARE
SUPERVISION

Finn v. Warren County, Kentucky, 768 F.3d 441 (6th Cir. 2014). The administrator of an inmate's estate and the guardian of the inmate's minor children brought a § 1983 action against a county, a jail's health care provider, and various jail employees, alleging violation of the inmate's Eighth and Fourteenth Amendment rights to receive adequate medical care while incarcerated. The district court granted summary judgment to some parties, and a jury returned verdicts for the remaining defendants on the remaining claims. The plaintiffs appealed. The appeals court reversed and remanded in part and affirmed in part. The court held that a supervisory jailer was not entitled to qualified immunity for his ministerial acts of training deputy jailers to follow a written emergency medical services (EMS) policy and to enforce that policy as written. When the inmate's condition worsened, cellmates threw objects at a speaker in the top of the cell to activate the intercom to get the guards' attention. The cellmates reported to the guards ten to fifteen times that something was wrong with the inmate and that he

needed to be taken to the hospital. According to the inmates, the guards ignored their pleas for help and turned off the television in their housing unit. A senior supervisor's incident report alleged that he checked on the inmate several times, while the jail's observation log showed that he checked on the inmate only twice: at 5:27 a.m. and at 6:28 a.m. Later the inmate died in the cell, and although he was found dead in his cell, a deputy entered on the observation log "appears to be okay." (Warren County Regional Jail, Kentucky)

U.S. District Court
TRANSPORTATION
PROTECTION FROM
HARM

Fouch v. District of Columbia, 10 F.Supp.3d 45 (D.D.C. 2014). A detainee, who allegedly suffered severe injuries from collision between two police vehicles, one of which he was riding in, handcuffed behind the back and without a seat belt or harness, while being transported between police stations for processing of a misdemeanor threat charge, brought an action against the District of Columbia and the two officers who had been driving the vehicles. After the court dismissed claims against the officer who had been driving the other vehicle, the District and the remaining officer filed a motion for partial dismissal. The district court granted the motion for partial dismissal in part and denied in part without prejudice. The court held that the District of Columbia could not be held liable for damages under § 1983. (District of Columbia Metropolitan Police Department, Central Booking Division)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

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

U.S. District Court
SUICIDE ATTEMPT

Goodvine v. Ankarlo, 9 F.Supp.3d 899 (W.D.Wis. 2014). An inmate brought a § 1983 action against Wisconsin Department of Corrections (WDOC) officials and psychologists, as well as an admissions officer at a mental health facility operated by the Wisconsin Department of Health Services (DHS), alleging that the defendants failed to prevent him from engaging in acts of self-harm, in violation of the Eighth Amendment. The defendants moved for summary judgment. The court held that: (1) the psychologists were not deliberately indifferent to the inmate's need for protection against self-harm; (2) officers who interacted with the inmate during meal-tray pickup were not deliberately indifferent to his need for protection against self-harm; (3) a psychologist was not deliberately indifferent in failing to alert security staff after the inmate advised him that he was having "cutting urges;" and, (4) an admissions coordinator was not deliberately indifferent to the inmate's need for adequate mental health care. The court also held that summary judgment was precluded by a genuine issue of material fact as to whether the sergeant who failed to contact the prison's psychological services unit (PSU) after the inmate told the officer that he was "feeling unsafe" and needed to go to an observation area for additional monitoring "immediately" was aware that the inmate presented a serious risk of self-harm, but failed to take reasonable measures to protect him.

According to the court, summary judgment was precluded by a genuine issue of material fact as to whether a correctional officer knew that the inmate who requested to be moved from disciplinary segregation to observation because he was suicidal was at a serious risk of self-harm, but failed to alert supervisory or psychological services unit (PSU) staff to conduct further evaluation before the inmate attempted suicide by cutting himself. Fact issues precluding summary judgment were also found by the court as to whether correctional officers who escorted mentally ill inmates to appointments with psychological services unit (PSU) and medical staff were deliberately indifferent to the mentally-ill inmate's need for protection against self-harm when they failed to summon PSU staff or a supervisory official after the inmate, who had a history of cutting himself with sharp objects, expressed thoughts of self-harm.

Summary judgment was also found to be precluded by a genuine issue of material fact as to whether a captain's decision to retain the mentally ill inmate at the prison, rather than transport him to a hospital after the inmate had changed his mind about refusing medical treatment, was reasonable under the circumstances. (Columbia Correctional Institution, Wisconsin)

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Graham v. Hodge, 69 F.Supp.3d 618 (S.D.Miss. 2014). The spouse of a pretrial detainee who died of cardiac arrhythmia brought a wrongful death action against a sheriff and a county alleging deliberate indifference to the detainee's medical care under the Due Process Clause of the Fourteenth Amendment, as well as failure to train under § 1983. The defendants moved for summary judgment. The district court granted the motion. The court held that a nurse was not deliberately indifferent to the detainee's medical needs, notwithstanding that the nurse waited 13 days to fax a medical authorization to a care center, that she sent the detainee to a medical clinic that had no cardiologist, that she was not aware for several months that the detainee was not taking necessary heart medication, and that the detainee ultimately died of cardiac arrhythmia. According to the court, the nurse regularly treated the detainee, which included providing him with his medication once she was made aware of its necessity, and the detainee's death was not proximately caused by the months-long lack of medicine. The court found that the detainee's death was not a highly predictable consequence of failing to train the jail nurse. (Jones County Adult Detention Facility, Mississippi)

U.S. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Hahn v. Walsh, 762 F.3d 617 (7th Cir. 2014). A female pretrial detainee's estate brought an action against a county, sheriff, and medical services contractor, alleging the defendants failed to provide adequate medical treatment for the detainee's diabetes in violation of her rights under the Fourteenth Amendment, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and Illinois law. After several of the estate's claims were dismissed, the district court entered summary judgment for the defendants on the estate's remaining claims. The estate appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that the district court abused its discretion in dismissing with prejudice the wrongful death claim brought by the detainee's estate for failure to include an affidavit and written report confirming the claim's merit, where the court made no specific finding that failure to include an affidavit and report was in bad faith or an attempt to delay litigation, and its conclusion that the estate could not timely file an amended complaint because the statute of limitations had lapsed failed to take into account the possibility that an amendment would relate back to the estate's initial, timely complaint. The court found that the county sheriff's lack of a written policy or procedure for diabetic detainees whose blood sugar was not being measured and who refused to eat did not amount to deliberate indifference to the pretrial detainee's serious medical needs in violation of her due process rights. According to the court, the deaths of seven correctional facility inmates and a single incident of an inmate complaining about his diabetes treatment were insufficient to put the sheriff on notice that his lack of a policy could cause the death of a detainee as a result of diabetic ketoacidosis, as none of the deaths were caused by complications from diabetes. (Champaign County Correctional Center, Illinois)

U.S. District Court
PROTECTION FROM
HARM

Haley v. Tryon, 12 F.Supp.3d 573 (W.D.N.Y. 2014). A former detainee brought an action against federal detention facility officials and four nonfederal officers, alleging failure to protect him and denial of proper medical treatment, in violation of his rights pursuant to the Eighth and Fourteenth Amendments. The defendants moved to dismiss. The district court granted the motion. The court held that the detainee's complaint failed to allege that a field office director and an assistant field officer director were personally involved in any constitutional violation, as required to state a Bivens claim. (Buffalo Federal Detention Facility, New York)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
PROTECTION FROM
HARM

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

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Hinojosa v. Livingston, 994 F.Supp.2d 840 (S.D.Tex. 2014). The mother of a former inmate who died of hyperthermia while incarcerated brought an action against the prison's health care provider, asserting claims under the Americans with Disabilities Act (ADA) and the Rehabilitation Act, alleging the provider's failure to make accommodations for the inmate's disabilities resulted in the inmate's death. The provider moved to dismiss. The district court denied the motion. The court held that the mother alleged sufficient facts to state that the inmate was discriminated against by the prison's health care provider, in support of her claims under the ADA and the Rehabilitation Act, by alleging that the provider knew of the risks and dangers associated with certain medical conditions and medications, that the provider knew the inmate suffered from those conditions and used those medications, and that despite that knowledge, the provider failed to make reasonable accommodations, resulting in the inmate suffering more pain and punishment than non-disabled prisoners, namely, his death. The court noted that the mother alleged that the provider knew both that the inmate suffered from hypertension, diabetes, schizophrenia, and/or depression, and was prescribed medications to treat his disabilities, and that extreme temperatures could be deadly, but still failed to protect the inmate from the extreme temperatures that ultimately resulted in the inmate's death.

The court found that the mother alleged sufficient facts concerning the accommodations that should have been provided by the prison's health care provider without a request, but were denied or refused, as well as which facilities, programs, or services should have been modified by the provider, to state claims under the ADA and the Rehabilitation Act. The mother complained that the provider's intake process was flawed in that it could take up to 10 days for prisoners to receive an intake physical, and that the delay created a loophole that left inmates with heat sensitive conditions and disabilities especially vulnerable to death because they did not receive accommodations for their heat sensitive disabilities, and that the provider's failure to employ 24-hour medical staff at the prison resulted in a fatal delay and denial of vital medical care to the inmate. (University of Texas Medical Branch, Texas Department of Criminal Justice Garza West Unit)

U.S. Appeals Court
SUICIDE
PROTECTION FROM
HARM

Johnson v. Conner, 754 F.3d 918 (11th Cir. 2014). The mother and personal representative of a mentally ill inmate who committed suicide by hanging himself with bed sheet while in custody at a county jail filed suit against corrections personnel working at the jail at the time of the suicide, as well as various county entities. The mother alleged that jailers were responsible for administering her son's medication daily, and failed to do so, that her son had previously attempted to commit suicide with a bed sheet while incarcerated, and that the jailers failed to take appropriate precautions with her son following that suicide attempt. The district court denied immunity to the jailers and the jailers appealed. The appeals court certified questions to the Alabama Supreme Court, which the Supreme Court declined to answer. The appeals court held that the statute extending immunity to county jailers did not apply retroactively to conduct which occurred prior to its enactment. (Barbour County Jail, Alabama)

U.S. Appeals Court
PRISONER ON
PRISONER ASSAULT

Keith v. DeKalb County, Georgia, 749 F.3d 1034 (11th Cir. 2014). The administrator of the estate of a pretrial detainee who was murdered by a fellow inmate in a jail's mental health unit brought an action against a county, the county sheriff, and correctional officers, alleging under § 1983 that the defendants violated the detainee's substantive due process rights. The district court denied the sheriff's motion for summary judgment based on the doctrine of qualified immunity. The sheriff appealed. The appeals court reversed. The court held that while a correctional officer on duty at the time the detainee was murdered by a fellow inmate may have acted contrary to jail policy by using a cell phone within the jail, the administrator of the detainee's estate failed to show that the use of personal cell phones within the jail was a widespread problem or that the county sheriff was aware that officers routinely violated the policy and failed to correct the problem. The court found that the sheriff was entitled to qualified immunity on the § 1983 due process claim that he was deliberately indifferent to the safety of the detainee, in failing to segregate mental health inmates with violent histories from those with nonviolent histories and by failing to separate mental health inmates charged with a violent crime from those charged with a nonviolent crime. According to the court, even if the sheriff violated the detainee's due process rights, it was not clearly established that he had a constitutional obligation to disregard the medical expertise of mental health contractors he hired to ensure that inmates' mental health was tended to. The court also found that the administrator of the estate of the detainee failed to show that the county sheriff was subjectively aware that the jail's policy of requiring detention officers to alert mental health staff when relocating mental health inmates to different cells within the same pod was disregarded on a widespread basis, as would have subjected the sheriff to supervisory liability under § 1983.

The court found that a prior isolated incident in which a pretrial detainee was killed by another inmate when the two were placed in the same cell in the jail's mental health pod did not provide requisite notice to the county sheriff that training provided to detention officers was constitutionally deficient, as would subject the sheriff to liability under § 1983 with respect to claims arising from the subsequent murder of a pretrial detainee by a fellow inmate in the same pod. (DeKalb County Jail, Georgia)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Keller v. U.S., 771 F.3d 1021 (7th Cir. 2014). A federal inmate brought an action under the Federal Tort Claims Act (FTCA), alleging that federal prison employees negligently failed to protect him from being attacked by another inmate. The government moved for summary judgment. The district court granted the motion and the inmate appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the prison intake psychologist failed to comply with mandatory regulations by not examining all of the inmate's medical records before releasing the inmate into the general prison population, and whether prison guards violated post orders by failing to attentively monitor their assigned areas of the prison yard. (United States Penitentiary, Terre Haute, Indiana)

U.S. Appeals Court
MEDICAL CARE

King v. Kramer, 763 F.3d 635 (7th Cir. 2014). The estate of a pretrial detainee who died while awaiting trial in a county jail brought a civil rights action against the county and the health care provider for the jail. Following reversal in part of the grant of summary judgment in favor of the county and the provider, the court entered judgment for the county and the provider on a jury verdict. The estate appealed. The appeals court reversed and remanded, finding that: (1) the county was not liable for the death of the detainee who was found dead in his jail cell after jail medical staff rapidly tapered off his psychotropic medication, absent evidence that the county had an official custom or policy in place to deprive inmates of their prescribed medications; (2) the district court could not take judicial notice of a contract between the county and the provider; and (3) the indemnification agreement between the county and the provider was inadmissible to show liability. (La Crosse Jail, Wisconsin)

U.S. Appeals Court
USE OF FORCE

Kitchen v. Dallas County, Tex., 759 F.3d 468 (5th Cir. 2014). The widow of a pretrial detainee who died of asphyxiation while he was being extracted from his jail cell brought a § 1983 action against the county, detention officers, and others, alleging that the defendants used excessive force and acted with deliberate indifference to the detainee's medical needs. The defendants moved for summary judgment. The district court granted the motion in its entirety, and the plaintiff appealed. The appeals court reversed and remanded in part, and affirmed in part. The court held that summary judgment was precluded by genuine issues of material fact as to both the timing and the degree of force used in extracting the detainee from his jail cell. The court noted that the law was "clearly established" at the relevant time that use of force against an inmate was reserved for good-faith efforts to maintain or restore discipline, rather than for the purpose of causing harm, such that the defendants had reasonable warning that kicking, stomping, and choking a subdued inmate would violate the inmate's constitutional rights under certain circumstances. The court held that the widow failed to demonstrate that detention officers acted with deliberate indifference to the detainee's medical needs, even though they failed to contact medical staff prior to attempting to extract the detainee from his cell, where the need for participation of specialized staff to perform the extraction of a mentally ill inmate from a jail cell was not so apparent that even laymen would recognize this alleged medical need. (Dallas County Jail, Texas)

U.S. Appeals Court
MEDICAL CARE
SUPERVISION

Laganier v. County of Olmsted, 772 F.3d 1114 (8th Cir. 2014). The trustee for a state inmate's heirs and next of kin filed a § 1983 action alleging that officials at a county adult detention center deliberately disregarded the inmate's medical needs. The district court entered summary judgment in the defendants' favor, and the trustee appealed. The appeals court affirmed. The court held that a deputy at the county adult detention center did not deliberately disregard the inmate's serious medical needs, in violation of the Eighth Amendment, even though another inmate had told jail guards to check on him, and the deputy failed to prevent the inmate's death from a methadone overdose. The court noted that there was no evidence that the deputy was aware of the other inmate's statement, and the deputy checked on the inmate every half hour, observed the inmate asleep in his cell instead of engaged in the morning routine at the center, and did not observe anything unusual. (Olmsted County Adult Detention Center, Minnesota)

<p>U.S. Appeals Court PRISONER ON PRISONER ASSAULT</p>	<p><i>Lakin v. Barnhart</i>, 758 F.3d 66 (1st Cir. 2014). State inmates filed § 1983 actions alleging that prison officials acted with deliberate indifference to a substantial risk that inmates would use padlocks issued to them by the prison to assault fellow inmates, in violation of the Eighth Amendment and the Maine Civil Rights Act. The district court entered summary judgment in the officials' favor, and the inmates appealed. The appeals were consolidated, and the appeals court affirmed. The court held that the inmates did not face a substantial risk of being assaulted with padlocks by their fellow inmates, and thus the prison officials did not violate the Eighth Amendment by failing to discontinue the practice of providing padlocks to inmates to secure their personal items, where annual occurrences of padlock assaults at the prison had generally been few, both in absolute number and as a percentage of total inmate violence. (Maine State Prison)</p>
<p>U.S. District Court MEDICAL CARE WRONGFUL DEATH</p>	<p><i>LCS Corrections Services, Inc. v. Lexington Ins. Co.</i>, 19 F.Supp.3d 712 (S.D.Tex. 2014). An insured prison operator brought an action seeking declaratory judgment that an insurer had a duty under a commercial umbrella liability policy to defend it in an underlying civil rights action. The underlying case was brought by the representative of a deceased inmate who allegedly died because of the operator's policy of not giving inmates their scheduled medications. The insurer moved for partial summary judgment. The district court granted the motion. The court held that the underlying claim for refusing to provide prescribed medications fell within the scope of the policy's professional liability exclusion, despite the operator's contention that the claim addressed administrative rather than professional conduct because it was a global administrative decision to deprive inmates of that particular medical care, where the exclusion extended to "failure to provide professional services." (Lexington Insurance Company, LCS Corrections Services, Inc., Texas)</p>
<p>U.S. District Court MEDICAL CARE WRONGFUL DEATH</p>	<p><i>M.H. v. County of Alameda</i>, 62 F.Supp.3d 1049 (N.D.Cal. 2014). A pretrial detainee's estate brought a civil rights action against a county, its sheriff, sheriff's deputies, and a correctional healthcare provider, alleging violations of § 1983 as well as common law claims for negligence, assault, and battery after the detainee died from alcohol withdrawal. The defendants moved for summary judgment. The district court held that summary judgment was precluded by fact issues: (1) with regard to the nurse who performed the detainee's medical intake assessment to determine, if she was subjectively aware of his risk of alcohol withdrawal but did nothing prior to his death; (2) as to whether the county adequately implemented its training policies concerning recognition of inmates with alcohol and other drug problems; (3) with regard to the healthcare provider for failure to supervise the nurse who performed the detainee's medical intake assessment and for failure to follow its own policies; and (4) as to whether a deputy was justified in using a stun gun against the detainee while moving him to an isolation cell and in delivering closed-fist strikes to the detainee's back after a struggle ensued. The court also found a fact issue with regard to whether a social worker was subjectively reckless when she chose to see other inmates despite knowing that the pretrial detainee was at risk for severe alcohol withdrawal. The detainee had been arrested for jaywalking. (Alameda County, Glenn Dyer Detention Facility, California)</p>
<p>U.S. District Court PRISONER ON PRISONER ASSAULT SUPERVISION</p>	<p><i>Morales v. U.S.</i>, 72 F.Supp.3d 826 (W.D.Tenn. 2014). A federal prisoner brought an action against the United States under the Federal Tort Claims Act (FTCA), alleging the Bureau of Prisons (BOP) breached its duty of care, resulting in his assault and injury by another prisoner. The district court held that: (1) the prisoner's administrative claim satisfied FTCA's notice requirements; (2) the BOP breached its duty of care to the prisoner by placing him in a recreation cage with a prisoner with whom he was in "keep-away" status; and (3) the prisoner was entitled to damages under FTCA in the amount of \$105,000. The court noted that officers were not monitoring the recreation cage at the time of attack, and, as a result of such failures, the prisoner suffered 14 stab wounds, nerve damage, and psychological harm. (Federal Bureau of Prisons, FCI- Memphis, Tennessee)</p>
<p>U.S. District Court WRONGFUL DEATH MEDICAL CARE</p>	<p><i>Mori v. Allegheny County</i>, 51 F.Supp.3d 558 (W.D.Pa. 2014). An inmate who was seven and one-half months into a "high risk" pregnancy brought an action under § 1983 against a county for deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, and survival and wrongful death claims for violations of the Fourteenth Amendment, after the loss of the child following a placental abruption. The county moved to dismiss. The district court denied the motion. The court held that the prisoner: (1) stated an Eighth Amendment claim based on failure to monitor the unborn child after the prisoner complained of vaginal bleeding; (2) stated a claim against the county based on custom and practice; (3) sufficiently alleged a causal link between the policies and the loss of the child; (4) stated a claim against county officials for individual liability; and (5) stated wrongful death and survivor claims for the death of the child. The inmate alleged that individual policy makers, including the chief operating officer of the county jail's health services, and the jail's nursing supervisor, were responsible for the policies that led to failure to provide adequate medical treatment. The prisoner also alleged that she was made to wait over 24 hours before being sent to a hospital after her vaginal bleeding started, that she was transported by a police cruiser rather than ambulance, that it was well known that bleeding late in pregnancy often indicated serious medical issues, that the child was alive during birth, and that the delay in medical treatment contributed to the injuries during birth and the death of the child shortly after birth. (Allegheny County Jail, Pennsylvania)</p>
<p>U.S. District Court PROTECTION FROM HARM</p>	<p><i>Morris v. Corrections Corporation of America</i>, 75 F.Supp.3d 457 (D.D.C.. 2014) A former District of Columbia inmate brought a state-court negligence action against a private prison operator, seeking damages for a scrotal burn injury he allegedly sustained when the water temperature in a prison shower spiked unexpectedly. The operator moved the action to federal court, and moved for summary judgment. The district court granted the motion. The court held that there was no evidence that the operator had notice of allegedly dangerously high water temperatures in the prison showers, and the operator's alleged breach of its duty to properly maintain the shower facilities was not the proximate cause of the scrotal burn. (Correctional Treatment Facility, operated by Corrections Corporation of America, Washington, D.C.)</p>

U.S. District Court
SUICIDE
WRONGFUL DEATH
SUPERVISION

Nagle v. Gusman, 61 F.Supp.3d 609 (E.D.La. 2014). Siblings of a mentally ill pretrial detainee who committed suicide brought an action against numerous employees of a parish sheriff's office, alleging a due process violation under § 1983, and asserting claims for wrongful death and negligence under state law. The siblings moved for partial summary judgment. The district court granted the motion. The court held that: (1) a deputy had a duty to take reasonable measures to protect the detainee from self-inflicted harm; (2) the deputy breached his duty by failing to observe the detainee for long periods of time; (3) the deputy's abandonment of his post was the cause of the detainee's suicide; (4) the sheriff was vicariously liable; and (5) the deputy's repeated decision to abandon his post violated the detainee's due process right to adequate protection from his known suicidal impulses. According to the court, the detainee was suffering from psychosis and was suicidal while in custody, the detainee was placed on a suicide watch, suicide watch policies and training materials of the sheriff's office explicitly required officers to continuously monitor detainees on a suicide watch and to document that they had done so, and it was during one of the deputy's extended absences that the detainee succeeded in killing himself. The officer left his post at least three times during his suicide watch shift, to help another employee distribute meals to other inmates, to take a restroom break, and to visit the nurses' station. During these absences, the detainee went unobserved for an hour and a half, fifteen minutes, and two hours respectively. No other staff took the officer's place observing the detainee during the times when the officer abandoned his post. During the officer's final absence, an inmate notified an on-duty officer that the detainee was lying on the floor of his cell, unresponsive. It was later determined that the detainee had asphyxiated after his airway became blocked by a wad of toilet paper. (Orleans Parish Sheriff's Office, Orleans Parish Prison, Louisiana)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
MEDICAL CARE

Olson v. Morgan, 750 F.3d 708 (7th Cir. 2014). An inmate brought a pro se § 1983 action against prison officials asserting violations of the Eighth Amendment, specifically, that a correctional officer failed to move him to a new cell when he warned the officer that the cellmate was not taking medication and might become violent. The inmate also alleged that the manager of the prison's health-services unit delayed treatment of a broken tooth he suffered when the cellmate attacked him. The district court granted summary judgment in favor of the officials. The inmate appealed. The appeals court affirmed. The court held that there was no evidence that the correctional officer was subjectively aware that the cellmate was dangerous, as required to support the inmate's Eighth Amendment claim. The court held that there was no evidence that the manager of the prison's health-services unit failed to act promptly once she learned of inmate's broken tooth suffered when the cellmate attacked him, as required to support the inmate's Eighth Amendment. (Columbia Correctional Institution, Wisconsin)

U.S. Appeals Court
SUICIDE ATTEMPT

Penn v. Escorsio, 764 F.3d 102 (1st Cir. 2014). The guardian of a pretrial detainee brought an action against county corrections officers, alleging deliberate indifference to the detainee's health in violation of the detainee's Fourteenth Amendment Due Process rights, following the detainee's attempted suicide while in the county jail. The district court denied the officers' motion for summary judgment. The officers appealed. The appeals court affirmed in part and dismissed the appeal in part. The court held that the officers were not entitled to qualified immunity from a deliberate indifference claim at the summary judgment phase, where the law was clearly established that county corrections officers were required to take some reasonable measures to thwart a known, substantial risk that a pretrial detainee would attempt suicide at the time that plaintiff detainee made such an attempt. The court noted that the facts supported conclusions that the officers faced the knowledge of a substantial risk to the detainee, and effectively failed to take any action to forestall the risk that the detainee would attempt suicide at the moment he did. The detainee was arrested and taken to the jail on a Saturday for allegedly being intoxicated and committing an assault in violation of the terms of his release. His arraignment was set for Monday. During the booking process, an officer completed both a suicide risk assessment form and a medical screening form for the detainee. The suicide risk assessment revealed that the detainee had, among other things: (1) lost two close friends to suicide; (2) attempted suicide himself two years prior; and, (3) when asked whether he then felt like killing himself responded "not sure, feels that ... life is over." Under the jail's suicide risk assessment form, a suicide risk score of 15 or more points qualifies as the highest suicide risk level and requires one-on-one observation of the inmate, and the completion of a mental health evaluation within one hour. The detainee's risk of suicide scored at least 20 points. The detainee was placed on a "welfare watch," which required staff to make separate log entries regarding his condition when they conducted their fifteen-minute checks of his cell. Although the jail had an available suicide prevention cell which could be constantly monitored from the intake desk, he was placed in another cell out of view of any staff post. The cell was not stripped of objects a detainee could use to harm himself, and contained sheets and bedding which a detainee could potentially fashion into a makeshift noose—as the detainee did, following his return to jail after his court appearance on Monday. (Knox Co. Jail, Maine)

U.S. Appeals Court
SUICIDE ATTEMPT

Pittman ex rel. Hamilton v. County of Madison, Ill., 746 F.3d 766 (7th Cir. 2014). By and through his guardian, a pretrial detainee brought a § 1983 action against a county and various jail officials, alleging the defendants were deliberately indifferent to his risk of suicide in violation of the Fourteenth Amendment. The district court granted the defendants' motion for summary judgment and denied the detainee's motion for a new trial. The detainee appealed. The appeals court affirmed in part, reversed in part, and remanded. The appeals court held that a nurse and doctor were not deliberately indifferent, that there was no evidence that the sheriff or a captain knew of a substantial risk of harm for the detainee, and that the jail's suicide prevention policies and practices were not so inadequate that they violated the detainee's rights. But the appeals court also held that summary judgment was precluded by a genuine issue of material fact as to whether a deputy and a sergeant were aware of the detainee's risk of suicide, where the detainee requested to see a crisis intervention person. According to the court, when an inmate presents an officer with a request to see a crisis intervention person and the officer also is aware that the reason for the request well may be a serious psychological condition that is beyond the officer's capacity to assess definitively, the officer has an obligation under the Eighth Amendment to refer that individual to the person who, under existing prison procedures, is charged with making that definitive assessment. (Madison County Jail, Illinois)

U.S. District Court
SEXUAL ASSAULT

Poore v. Glanz, 46 F.Supp.3d 1191 (N.D.Okla. 2014). A juvenile female held as an inmate in the medical unit of a county jail brought an action against the county and the county sheriff in his individual capacity under § 1983 alleging deliberate indifference to her health in violation of the Eighth Amendment prohibition of cruel and unusual punishment, based on an alleged failure to prevent a detention officer's repeated sexual assaults. The defendants moved for summary judgment. The district court denied the motion. The court held that summary judgment was precluded by genuine disputes of material fact as to whether the county sheriff was aware of the risk of sexual assault by detention officers as to female inmates housed in the medical unit of the county jail, and whether he failed to take steps to alleviate that risk. The court also found a genuine dispute of material fact as to whether the county jail had a policy and practice of housing juvenile female inmates in a wing of the medical unit which was not under direct supervision and was frequently single-staffed, such that it placed those inmates at a substantial risk of sexual assault by jail staff. (Tulsa County Jail, also called the David L. Moss Criminal Justice Center, Oklahoma)

U.S. District Court
MEDICAL CARE
SEARCHES

Rahman v. Schriro, 22 F.Supp.3d 305 (S.D.N.Y. 2014). A pretrial detainee brought a § 1983 action against a state prison commissioner, warden, deputy warden, deputy of security, and officers, alleging they violated the Fourteenth Amendment's Due Process Clause by forcing him to go through a radiation-emitting X-ray security screening machine in order to get to and from his daily work assignment. The defendants moved to dismiss for failure to state a claim. The district court granted the motion in part and denied in part. The court held that the detainee sufficiently alleged a serious present injury or future risk of serious injury, as required to state a deliberate indifference claim against prison officials under the Fourteenth Amendment's Due Process Clause, by alleging that he was subjected to at least two full-body X-ray scans each day, that each scan exposed him to a level of radiation that was 10 to 50 times higher than that emitted by airport scanners, that radiation damages cells of the body and that even low doses of radiation increase an individual's risk of cancer, and that federal regulations prohibited prison officials from using even non-repetitive X-ray examinations for security purposes unless the device was operated by licensed practitioner and there was reasonable suspicion that the inmate had recently secreted contraband. According to the court, the detainee's allegations that a prison officer intentionally subjected him to a higher dose of radiation through a full-body X-ray screening machine while calling him a "fake Muslim, homosexual, faggot" were sufficient to allege that the force was not applied to maintain or restore discipline, as required to state an excessive force claim under Fourteenth Amendment's Due Process Clause. The court held that the alleged force exerted by a prison officer on the detainee by setting the full-body X-ray screening machine to a higher radiation dose on one occasion was not excessive in violation of the Fourteenth Amendment's Due Process Clause. The court noted that the alleged force was de minimis, and the use of a higher setting of radiation, which was designed to produce a better image, in a situation where detainee expressed resistance to the scanning process and could have been conceivably hiding contraband was not the type of force repugnant to the conscience of mankind. (Anna M. Kross Center, Rikers Island, N. Y. City Dept. of Correction)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
INFORMANTS

Reeves v. King, 774 F.3d 430 (8th Cir. 2014). An inmate brought a § 1983 action against a correctional officer, alleging violations of the Eighth Amendment in being labeled a snitch. The district court denied the officer's motion for summary judgment based on qualified immunity. The officer appealed. The appeals court affirmed. The court held that the inmate's right not to be labeled a snitch regarding conduct that was beneficial to other inmates was clearly established at the time correctional officer allegedly called the inmate a snitch in front of other inmates, for purposes of determining whether the officer was entitled to qualified immunity in the inmate's § 1983 action alleging violations of the Eighth Amendment. (Ouachita River Unit, Arkansas)

U.S. District Court
MEDICAL CARE

Revilla v. Glanz, 7 F.Supp.3d 1207 (N.D.Okla. 2014). Four pretrial detainees or representatives of their estates brought an action against a county sheriff, asserting claims under § 1983 and the Oklahoma Constitution, relating to allegedly deficient medical care. The sheriff filed a motion to dismiss. The district court denied the motion, finding that the plaintiffs stated a § 1983 claim against the sheriff for supervisory liability in his individual capacity, and a § 1983 claim against the sheriff for liability in his individual capacity. The court noted that the Due Process Clause of the Oklahoma Constitution protects pretrial detainees against the denial of medical attention. The plaintiffs alleged: (1) that the sheriff was responsible for ensuring that pretrial detainees received appropriate medical care; (2) that he was responsible for creating, adopting, approving, ratifying, and enforcing the policies that his subordinates allegedly violated; (3) that he failed to provide prompt and adequate care in the face of known and substantial risks to each detainee's health-; and (4) that he had long known of systemic deficiencies in the jail's medical care. The plaintiffs cited numerous incidents and reports, as well as inmate deaths, which they alleged provided clear notice to the sheriff of seriously deficient medical and mental health care which placed inmates at a serious risk of injury or death. One such notice included a report by the United States Department of Homeland Security's Office of Civil Rights and Civil Liberties which "found a prevailing attitude among clinic staff [at the Jail] of indifference." (Tulsa County Jail, Oklahoma)

U.S. District Court
SUICIDE
SUPERVISION

Rogge v. City of Richmond, Tex., 995 F.Supp.2d 657 (S.D.Tex. 2014). The parents of an arrestee who committed suicide while in police custody brought a § 1983 and state law action in state court against the city and two police officers. The defendants removed the action to federal court and moved for summary judgment. The district court granted the motion. The court held that the arresting police officer was unaware of the arrestee's risk of self harm. The arrestee committed suicide in a police station holding cell, and thus, by not checking on the arrestee for several hours, the officer did not act with deliberate indifference to the arrestee's obvious need for protection from self harm, so as to violate his due process rights. The court noted that the arrestee was calm and that he cooperated with the officer during their interaction, and although he said he was terminated from his job, admitted drinking, and said he was on medication for anxiety, he did not express an interest in hurting himself or appear distraught. The message that the officer received from the arrestee's father did not raise suspicion of a risk of suicide, and the officer believed that all dangerous personal items had been taken from the arrestee and that the dispatch officer would monitor him via a video feed.

The court found that the police dispatch officer who was monitoring the video feed from the police station holding cell was unaware of the arrestee's risk of self harm, and thus, the officer did not act with deliberate indifference to the arrestee's obvious need for protection from self harm, so as to violate his due process rights. The arrestee slept on bench in the cell for most of the two and a half hours he was in the cell before hanging himself, and the officer did not observe on the video monitor any behavior on the arrestee's part that suggested he was a suicide risk. The officer observed that the arrestee did not have items of personal property considered to be suicide implements, and although the arrestee's father came to the station and told the officer that he and his wife were worried, he did not indicate the arrestee might be suicidal. (Richmond City Jail, Texas)

U.S. Appeals Court
WRONGFUL DEATH
MEDICAL CARE

Rouster v. County of Saginaw, 749 F.3d 437 (6th Cir. 2014). The representative of the estate of a detainee who died while in custody at a county jail brought a § 1983 action against the county, the contractor that provided medical services to the county jail, and the jail's nursing staff, who were employees of the contractor. The district court granted in part the defendants' motion for summary judgment. The representative appealed. The appeals court affirmed. The court held that the county jail's nursing staff did not have subjective knowledge of the detainee's perforated duodenal ulcers, which eventually resulted in sepsis and the detainee's death, and staff did not consciously disregard the detainee's condition or otherwise refuse to provide appropriate treatment, as required for staff to be liable in a § 1983 Fourteenth Amendment deliberate indifference claim. According to the court, although staff was aware that the detainee had complained of stomach cramping, diarrhea, and vomiting, and that he had been observed engaging in bizarre behavior, such as drinking from a toilet, they misdiagnosed him first with gas and diarrhea, and later with alcohol withdrawal. The court noted that the detainee never told any staff member about his previous treatment for his ulcer, staff did not ignore the detainee's symptoms, but attempted to treat him with over-the-counter medication and moved him to an observation cell for monitoring. (Saginaw County Jail, Michigan)

U.S. District Court
OFFICER ON PRISONER
ASSAULT
FAILURE TO INTERVENE

Rowlery v. Genesee County, 54 F.Supp.3d 763 (E.D.Mich. 2014). A detainee brought an action against a county and officers and deputies in the county sheriff's department, alleging that he was assaulted by deputies on two occasions when he was lodged at the county jail. The defendants moved for partial summary judgment. The district court granted the motion in part and denied in part. The district court held that summary judgment was precluded by genuine issues of material fact as to: (1) whether the county adequately trained officers and deputies regarding the use of force; (2) whether certain officers and deputies came into physical contact with the detainee; (3) whether certain officers and deputies failed to act reasonably when they did not act to prevent or limit other deputies' use of force on the detainee; and (4) whether the alleged failure of certain officers and deputies to put a stop to other deputies' use of force on the detainee was the proximate cause of the detainee's injuries. (Genesee County Jail, Michigan)

U.S. Appeals Court
USE OF FORCE
PRISONER ON STAFF
ASSAULT

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

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

U.S. Appeals Court
FAILURE TO
INTERVENE
USE OF FORCE

Smith v. Conway County, Ark., 759 F.3d 853 (8th Cir. 2014). A pretrial detainee brought a § 1983 action against two jailers, a county jail administrator, the county, and the sheriff, alleging claims for excessive force and failure to supervise under the Fourteenth Amendment. The district court denied qualified immunity to the administrator and jailers and denied summary judgment to the county and individual defendants. The defendants appealed. The appeals court affirmed in part and dismissed in part. The court held that a nonviolent pretrial detainee's right to be free from being shot with a stun gun for non-compliance was clearly established at the time a jailer used a stun gun on the detainee for the purpose of achieving compliance, and thus, the jailer was not entitled to qualified immunity from the detainee's § 1983 claim of excessive force in violation of the Fourteenth Amendment. The court found that at the time a jailer failed to intervene when another jailer warned the pretrial detainee and then shot him with a stun gun, that a jail official violated a pretrial detainee's due process rights if the official knew that another official was using excessive force against the detainee but failed to intervene, and thus the jailer was not entitled to qualified immunity from the detainee's § 1983 claim of excessive force in violation of the Fourteenth Amendment. (Conway County Jail, Arkansas)

<p>U.S. District Court PRISONER ON PRISONER ASSAULT SUPERVISION</p>	<p><i>Taylor v. Swift</i>, 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 prisoner claimed indifferent supervision of jail officers, when members of the Crips gang served him and other non-gang members “tiny food portions while serving gang members large food portions.” The prisoner complained to officials and this resulted in the Crips gang members being admonished and chided. The day after this chiding, the prisoner alleged that he and two other non-Crips-affiliated inmates “were victims of gang assault where [plaintiff] & [another inmate] got cut & stabbed.” According to the inmate, while the attack was occurring, a corrections officer allowed the Crips to act with impunity and waited 20 to 30 minutes to press an alarm, and another officer failed to open a door that would lead the prisoner to safety, and failed to use mace to break up the alleged gang assault. (New York City Department of Correction, Riker’s Island)</p>
<p>U.S. Appeals Court PRISONER ON PRISONER ASSAULT</p>	<p><i>Thomas v. Cumberland County</i>, 749 F.3d 217 (3rd Cir. 2014). Following an attack by other inmates at a county correctional facility, an inmate brought an action against the county and corrections officers at the facility pursuant to § 1983 and the New Jersey Civil Rights Act, alleging failure to train, failure to protect, failure to intervene, and incitement. The district court granted summary judgment in favor of the county and an officer. The inmate’s claims against the other officer proceeded to trial, and a jury found in favor of the officer. The inmate appealed the district court’s grant of summary judgment in the county’s favor on the § 1983 failure to train claim. The appeals court vacated. The court held that a triable issue remained as to whether the county exhibited deliberate indifference to the need for pre-service training for officers in conflict de-escalation and intervention and whether the lack of such training caused the inmate’s injuries. (Cumberland County Correctional Facility, New Jersey)</p>
<p>U.S. District Court PRISONER ON PRISONER ASSAULT PROTECTION FROM HARM</p>	<p><i>Thornton v. Jackson</i>, 998 F.Supp.2d 1365 (N.D.Ga. 2014). An inmate and his wife brought a § 1983 action against various prison employees and officials, alleging violations of the Eighth Amendment, as well as negligence and intentional infliction of emotional distress (IIED). The defendants moved for summary judgment. The district court granted the motion. The court held that the inmate, who was housed at the prison as a visiting-inmate while testifying against another member of the inmate’s gang, was not incarcerated under conditions posing a substantial risk of harm, as required to establish the objective requirement for his § 1983 claim against various prison officials and employees. The inmate alleged violation of the Eighth Amendment after he was assaulted by three other inmates. The inmate claimed that his different color jumpsuit identified him as snitch and as a target for violence. The court noted that the prison’s inmates did not have a history of attacking visiting inmates, the prison had an order requiring the inmate be kept separate from one other inmate, but did not require protective custody or isolation, the inmate did not have problems with anybody for seven days, and the inmate saw some other inmates talking and reported that he suspected that they were talking about him, but he did not hear what they were saying. (Fulton County Jail, Atlanta)</p>
<p>U.S. District Court TRANSPORTATION PROTECTION FROM HARM</p>	<p><i>Torres v. Amato</i>, 22 F.Supp.3d 166 (N.D.N.Y. 2014). The administrator of a pretrial detainee’s estate brought a § 1983 action against corrections officers, a sheriff, government officials, and a county, alleging deliberate indifference to the serious risk of harm in violation of the Fourteenth Amendment and various state claims. The defendants moved for summary judgment. The district court denied the motion. The court held that: (1) disputes of material fact as to whether the door to a transport van was improperly latched or the officer was operating the van in a reckless manner precluded summary judgment on the deliberate indifference claim against the officers; (2) a dispute of material fact as to the personal involvement of government officials in the alleged conduct precluded summary judgment on deliberate indifference claim against the officials and the county; and (3) the defendants were not entitled to qualified immunity from the § 1983 claim. The court noted that the detainee’s right to be free from deliberate indifference to a substantial risk of harm was clearly established at the time the detainee suffered fatal injuries after falling out of transport van driven by corrections officers, and thus, officers and government officials were not entitled to qualified immunity from the § 1983 claim of deliberate indifference to a substantial risk of harm in violation of the Fourteenth Amendment. (Montgomery County Sheriff’s Department, New York)</p>
<p>U.S. Appeals Court PRISONER ON PRISONER ASSAULT</p>	<p><i>Walls v. Tadman</i>, 762 F.3d 778 (8th Cir. 2014). A prisoner sued prison officials, claiming that they violated his Eighth Amendment right against infliction of cruel and unusual punishment when they failed to protect him from attacks by other prisoners. Following a bench trial, the district court entered judgment for the officials. The prisoner appealed. The appeals court affirmed, finding that the officials did not respond unreasonably to any substantial risk of harm to the prisoner. According to the court, assuming that the prisoner faced a substantial risk of harm from being labeled a “snitch” and that prison officials were aware of that risk, the officials offered the prisoner protective custody after the first alleged attack. He declined the offer, he asked to be returned to the general population when prison officials placed him in protective custody anyway. He declined to report an enemy situation with regard to the alleged attacker, both the prisoner and the alleged attacker told officials that they expected no further problems, and at no point did the prisoner ask for protection. (Iowa State Penitentiary)</p>
<p>U.S. District Court MEDICAL CARE SUICIDE ATTEMPT</p>	<p><i>Young v. Choinski</i>, 15 F.Supp.3d 172 (D.Conn. 2014). A state prisoner brought an action against prison officials and personnel under § 1983, alleging deliberate indifference to his medical and mental health needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that the prisoner failed to establish that his medical need was objectively serious, as required to support a claim against prison officials and personnel for deliberate indifference to a serious medical need in violation of Eighth Amendment. The court noted that, although the prisoner alleged he cut his arms with a metal object causing severe bleeding, none of wounds appeared to be</p>

bleeding on a video recording of the prisoner as he was escorted from his cell to a medical unit, the prisoner did not allege that the abrasions significantly interfered with his daily activities or caused him substantial or chronic pain, and he offered no evidence that the wounds required any further treatment beyond cleaning and antibiotic ointment. The court found that the prisoner suffered from a serious mental health need, as required to support claim against prison personnel for deliberate indifference to his serious mental health needs in violation of the Eighth Amendment, where the prisoner had been diagnosed with post-traumatic stress disorder, borderline personality disorder, and antisocial personality disorder, and the prisoner's health records reflected that he had made prior attempts and threats to commit suicide.

The court held that summary judgment was precluded by a genuine dispute of material fact as to whether a corrections officer intentionally refused to take action to summon mental health or medical personnel to evaluate and treat the prisoner after he became aware of the prisoner's suicidal thoughts, and then the officer learned that the mental health unit had closed for the evening. (Northern Correctional Institution, Somers, Connecticut)

U.S. District Court
MEDICAL CARE
SUICIDE ATTEMPT

Young v. Choinski, 15 F.Supp.3d 194 (D.Conn. 2014). A prisoner, proceeding pro se, brought a § 1983 action against prison officials and personnel, alleging deliberate indifference to his serious medical and mental health needs, constituting cruel and unusual punishment in violation of the Eighth Amendment. After the district court granted the defendants' summary judgment motion in part and denied it in part, the defendants moved for reconsideration. The district court denied the motion. The court held that summary judgment was precluded by a genuine dispute of material fact as to whether a correctional officer was subjectively aware of the prisoner's serious mental health needs. The court found that the prisoner's complaint alleging deliberate indifference, failure to prevent and protect from self-harm, denial of medical care, and that a correctional officer failed to assist the prisoner with prompt medical attention was sufficient to state a claim against the officer for deliberate indifference to serious medical and mental health needs in violation of the Eighth Amendment. (Northern Correctional Institution, Somers, Connecticut)

2015

U.S. District Court
WRONGFUL DEATH

Benedict v. Southwestern Pennsylvania Human Services, Inc., 98 F.Supp.3d 809 (W.D. Va. 2015). Parents of a participant in a county drug treatment program brought an action against county defendants alleging state law claims for negligence and wrongful death, and claims under § 1983 for violation of substantive due process rights under the Fourteenth Amendment, and for deliberate indifference in violation of the Eighth Amendment. The participant had died from an overdose of heroin. Following removal to federal court, the defendants moved to dismiss. The district court granted the motion. The court held that: (1) the participant's intermittent custody did not trigger Eighth Amendment protections; (2) the parents failed to allege that program operators were aware of an excessive risk; (3) participation in the program did not create a special relationship that would impose a duty to protect; and (4) the parents failed to allege a state created danger. The court noted that the participant was only required to report to custody for three hours a day, he was able to live with his parents, and was able to engage in any lawful activity he chose while not attending the program. (Westmoreland County Adult Probation/Parole Office, Westmoreland County Jail, Pennsylvania)

U.S. District Court
INMATE ON INMATE
ASSAULT

Bloom v. Toliver, 133 F.Supp.3d 1314 (N.D. Okla. 2015). A pretrial detainee brought a § 1983 action against a jail's administrator, shift supervisors, detention officer, and county sheriff, alleging violations of his Fourth, Eighth, and Fourteenth Amendment rights in connection with an attack on him by another inmate while being transferred from a holding cell to a segregation cell. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by a genuine issue of material fact as to whether the jail shift supervisor who made the decision to move the pretrial detainee from a holding cell to a segregation cell did so with a desire to punish the detainee, in violation of the Fourteenth Amendment's due process clause. The supervisor admitted that there were cells other than the one where the detainee was moved, and testified that his intent in moving the detainee "was to discipline [the detainee] Bloom," and that placement in any of the other cells "wouldn't have been disciplinary." The court also found that summary judgment was precluded by a genuine issue of material fact as to whether the jail's detention officer violated the pretrial detainee's Fourteenth Amendment right to be protected from substantial risks of assault from other inmates by moving him from the holding cell to a segregation cell in which another inmate was being held. (Creek County Criminal Justice Center Oklahoma)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Castro v. County of Los Angeles, 797 F.3d 654 (9th Cir. 2015). An arrestee brought an action against a county, its sheriff's department, and two officers under § 1983 for violation of his Fourth Amendment right to be protected from harm by other inmates, arising out of an attack against the arrestee by another arrestee with whom he was jailed. A jury returned a verdict for the arrestee, and the district court denied the defendants' motion for judgment as a matter of law. The defendants appealed. The appeals court affirmed in part and reversed in part. The court held that: (1) the right of inmates to be protected from attacks by other inmates was established with sufficient clarity to guide a reasonable officer; (2) substantial evidence supported the jury's determination that the officer was deliberately indifferent to a substantial risk of serious harm to the arrestee; (3) sufficient evidence supported the jury's determination that the officer's deliberate indifference was the actual and proximate cause of harm to the arrestee; (4) sufficient evidence supported the jury's determination that the supervising officer was aware of, but disregarded, the risk to the arrestee posed by the other inmate; (5) the design of a jail by a municipality is the result of a series of deliberate choices that render the design a formal municipal policy for the purposes of municipal liability under § 1983; (6) arrestee failed to establish that the county had actual knowledge of a risk of harm from the design of the jail, as required to establish liability under § 1983; and (7) the award of future damages to the arrestee was supported by the record. The jury returned a verdict for the arrestee on all counts and awarded him \$2,605,632 in damages. The parties later stipulated to \$840,000 in attorney fees, \$18,000 in punitive damages.

The arrestee had been placed in a “sobering cell” after his arrest for public drunkenness and was seriously injured by another drunken inmate in the sobering cell. When the other inmate was admitted, staff determined that he posed a threat to officers, requiring supervision by two officers at all times. The other arrestee was placed in the same cell as the plaintiff, even though the jail policy was to place combative inmates in a separate cell, and separate cells were available but left unused on the night of the incident.

The jail was purportedly in violation of a state regulation requiring monitoring equipment in sobering cells, as required to establish that the county was deliberately indifferent to the Fourth Amendment right of pretrial detainees to be protected from harm by other inmates and was liable under § 1983 for injuries sustained by the arrestee. According to the court “One would assume that for any given construction project, including jails, the municipality’s governing body—or a committee that it appoints to act in its stead—reviews bids, considers designs, and ultimately approves a plan for the facility and allocates funds for its construction. These choices are sufficient, in our opinion, to meet the definition of a formal municipal policy...” (Los Angeles Sheriff’s West Hollywood Station, California)

U.S. District Court
SUICIDE

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

Coley v. Lucas County, Ohio, 799 F.3d 530 (6th Cir. 2015). The administrator of a pretrial detainee’s estate brought a state court action against a county, county sheriff, police officer and police sergeant, alleging § 1983 violations of the detainee’s constitutional rights and various state law claims. The district court denied the defendants’ motions to dismiss and denied individual defendants’ requests for qualified immunity. The defendants appealed. The appeals court affirmed. The court held that a police officer’s act of shoving a fully restrained pretrial detainee in a jail booking area, causing the detainee to strike his head on the wall as he fell to the cement floor without any way to break his fall, constituted “gratuitous force” in violation of the detainee’s Fourteenth Amendment right to be free from excessive force. The court noted that the detainee’s state of being handcuffed, in a belly chain and leg irons, led to a reasonable inference that the officer’s actions were a result of his frustration with the detainee’s prior restraint behavior, since the detainee was not in any condition to cause a disruption that would have provoked the officer to use such force. The court held that the police officer was on notice that his actions were unconstitutional, and therefore he was not entitled to qualified immunity from liability under § 1983. According to the court, the officer’s attempts to cover up the assault by filing false reports and lying to federal investigators following the death of the detainee led to a reasonable conclusion that the officer understood that his actions violated the detainees’ clearly established right not to be gratuitously assaulted while fully restrained and subdued.

The court held that a police sergeant’s continued use of a chokehold on the unresisting, fully-shackled pre-trial detainee, after hearing the detainee choke and gurgle, and when a fellow officer was urging him release his chokehold, was objectively unreasonable, in violation of the detainee’s Fourteenth Amendment right to be free from excessive force. The court noted that the sergeant’s subsequent acts of telling other officers to leave the medical cell after the detainee was rendered unconscious, failing to seek medical help, and refusing to mention the use of a chokehold in incident reports, led to the inference that the sergeant was aware he violated the law and sought to avoid liability. According to the court, the police sergeant was on notice that his actions were unconstitutional, and therefore, he was not entitled to qualified immunity under § 1983.

The court concluded that the officers’ use of excessive force, failure to provide medical care, assault and battery, and wrongful death could be imputed to the sheriff in his official capacity since the sheriff’s false statements to federal investigators were a position that was inconsistent to non-affirmance of the officers’ actions. (Lucas County Jail, Ohio)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
MEDICAL CARE

Conley v. Birch, 796 F.3d 742 (7th Cir. 2015). An inmate, who allegedly injured his hand in a physical altercation with a fellow inmate, brought a § 1983 action against a prison physician for deliberate indifference in violation of the Eighth Amendment. The district court granted summary judgment in the physician’s favor, and the inmate appealed. The appeals court reversed and remanded. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether the prison physician strongly suspected that the inmate’s hand was fractured, precluding summary judgment in the physician’s favor on the issue of whether the physician was aware of the inmate’s condition on the inmate’s deliberate indifference claim under the Eighth Amendment. The court also found a fact issue as to whether the prison physician acted with deliberate indifference to the inmate’s serious medical needs by refusing either to promptly evaluate the inmate’s suspected hand fracture or to provide appropriate precautionary treatment, such as a splint. (Vienna Correctional, Illinois)

<p>U.S. Appeals Court PRISONER ON PRISONER ASSAULT FAILURE TO INTERVENE</p>	<p><i>Cortez v. Skol</i>, 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)</p>
<p>U.S. District Court INMATE ON INMATE ASSAULT WRONGFUL DEATH</p>	<p><i>Cotta v. County of Kings</i>, 79 F.Supp.3d 1148 (E.D.Cal. 2015). An inmate's mother, individually and as representative of the inmate's estate, as well as the prisoner's two daughters, brought an action against a county, and county jail officials, alleging that inadequate safety at the jail violated the inmate's constitutional rights and ultimately led to his death when he was killed by a cellmate. The defendants moved for summary judgment. The district court granted the motion in part and denied in part. The court held that: (1) the inmate's due process right to protection from violence was violated; (2) the jail's staffing policy on the night the inmate was murdered was not lacking, such that any need to remedy the staffing policy was not obvious; (3) an official's decision to house the inmate together with the cellmate was a ministerial determination that was not entitled to immunity; (4) an official did not breach her duty of care to protect the inmate from any foreseeable harm; and (5) summary judgment was precluded by genuine issues of material fact as to whether the county's lack of a policy requiring its employees to report safety risks was the cause of the inmate's murder and whether the county's conduct shocked the conscience. (Kings County Jail, California)</p>
<p>U.S. Appeals Court SEXUAL ASSAULT OFFICER ON PRISONER ASSAULT SEARCHES</p>	<p><i>Crawford v. Cuomo</i>, 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)</p>
<p>U.S. Appeals Court PRISONER ON STAFF ASSAULT WRONGFUL DEATH</p>	<p><i>Estate of Johnson v. Weber</i>, 785 F.3d 267 (8th Cir. 2015). The estate of a state prison guard who was murdered by inmates who attempted to escape brought a § 1983 action in state court against various prison officials and the state department of corrections (DOC), alleging constitutional violations. The action was transferred to federal court. The district court granted summary judgment in favor of the defendants and the estate appealed. The appeals court affirmed. The court held that state prison officials did not shock the conscience or act with deliberate indifference by housing two prisoners with violent criminal pasts, one with a history of multiple escapes and one with a history of planning an escape, in a medium security environment, and giving them job assignments which allowed the prisoners to move within the prison, and thus, the officials did not violate the substantive due process rights of the prison guard who was murdered by prisoners during their attempted escape. The court noted that the prisoners had no history of violence or threats while incarcerated before the murder, and one prisoner had worked in the prison for many years without creating any known threat of harm to any guard. (South Dakota State Penitentiary)</p>
<p>U.S. District Court OFFICER ON PRISONER ASSAULT FAILURE TO INTERVENE</p>	<p><i>Ewing v. Cumberland County</i>, 152 F.Supp.3d 269 (D. N.J. 2015). A former arrestee brought a § 1983 action, bringing claims against county correctional officers, police officers, and a number of municipal entities for use of excessive force and other constitutional violations. The defendants filed nine motions for summary judgment. The district court held that (1) issues of fact existed as to whether the force used on detainee was imposed maliciously and sadistically to cause harm; (2) issues of fact existed as to whether two officers who were not in the room when excessive force was allegedly used on the pre-trial detainee knew of and failed to intervene in the assault; (3) issues of fact existed as to whether five correctional officers conspired to cover up their actions; (4) issues of fact existed as to whether the police officer who had taken the detainee back to the jail after a trip to the hospital had reason to believe that the detainee's safety was in jeopardy when the officer left the jail, and (5) genuine issues of material fact existed as to whether the county trained its correctional officers on the use of force, whether the other trainings that took place were inadequate and untimely, whether that failure to train amounted to deliberate indifference, and whether there was a causal link between that lack of training and the injuries the detainee sustained at the hands of correction officers, precluding summary judgment for the defendants in the failure to train claim. According to the court, the detainee, while unarmed, suffered life-threatening injuries while in an isolated room with five officers, and that none of the officers were injured, indicated that the officers used force beyond what was necessary to take down the detainee, in a manner intended to inflict pain. The court noted that it was clearly established, at the time of the incident, that prisoners were protected from excessive force and wanton beatings that exceed good-faith efforts to maintain discipline and order, and a reasonable officer would have known that the force used was excessive. (Cumberland County</p>

U.S. District Court WRONGFUL DEATH MEDICAL CARE	<p>Correctional Facility and Vineland Police Department, New Jersey) <i>Fisher v. Miami-Dade County</i>, 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)</p>
U.S. District Court ACCIDENT	<p><i>Garcia-Feliciano v. U.S.</i>, 101 F.Supp.3d 142 (D.P.R. 2015). A detainee who was injured while walking restrained down a flight of stairs at a courthouse brought an action against the federal government under the Federal Tort Claims Act (FTCA), alleging that the U.S. Marshals Service was negligent in not providing him with assistance while walking down the steps while restrained. After a bench trial, the district court held that: (1) the leg irons attached to the detainee's legs were the cause of his fall; (2) a policy directive that required the marshals to not leave detainees unattended did not require a deputy to physically assist the detainee down stairs; and (3) the deputy's actions were a discretionary function, not subject to FTCA. The court dismissed the case. (U.S. Marshals Service, Puerto Rico)</p>
U.S. Appeals Court PRISONER ON PRISONER ASSAULT	<p><i>Gevas v. McLaughlin</i>, 798 F.3d 475 (7th Cir. 2015). A prisoner brought a § 1983 action against prison officials alleging violations of the Eighth Amendment in failing to protect him from an attack by his cellmate. The district court granted the defendants' motion for judgment as a matter of law. The prisoner appealed. The appeals court reversed and remanded. The appeals court held that the issue of whether prison officials had actual knowledge that the inmate was in danger of being harmed by his cellmate was for a jury to decide. According to the court, "Were a jury to credit Gevas's testimony that he alerted each of the defendants to his cellmate's threats to stab him, it could find that the defendants were aware of the danger posed to Gevas." The court found that prison officers were not entitled to qualified immunity, where the officers could not reasonably believe that requiring the inmate to violate a prison directive in order to be placed in segregation as a way to protect himself from an attack from his cellmate was a reasonable response to a substantial risk of harm to inmate. (Henry Hill Correctional Center in Galesburg, Illinois)</p>
U.S. Appeals Court SEXUAL ASSAULT	<p><i>Henderson v. Glanz</i>, 813 F.3d 938 (10th Cir. 2015). A special needs inmate brought a § 1983 action against a county sheriff and detention officers, alleging an Eighth Amendment violation for deliberate indifference to the risk of assault. The district court denied the defendants' motion for summary judgment based on qualified immunity and the defendants appealed. The appeals court reversed in part and dismissed in part. The district court held that undisputed record facts blatantly contradicted the district court's factual determination, in denying summary judgment based on qualified immunity. According to the court, the detention officer who left his post in the jail's medical unit to deliver a gurney during a medical emergency was entitled to qualified immunity from the special needs inmate's Eighth Amendment claim arising from her sexual assault by a fellow inmate while in the unit's tub room. The court noted that the officer had no subjective knowledge of the risk of assault to the inmate, and left believing the inmate was in a locked room under the supervision of another officer. (David L. Moss Criminal Justice Center, Tulsa, Oklahoma)</p>
U.S. Appeals Court WRONGFUL DEATH	<p><i>Hinojosa v. Livingston</i>, 807 F.3d 657 (5th Cir. 2015). The mother of an inmate who died of complications from heatstroke while incarcerated brought an action against prison officials and employees, the Texas Department of Criminal Justice (TDCJ), the University of Texas Medical Branch (UTMB), and an official of UTMB, alleging that they were responsible for her son's death. Prison officials moved to dismiss on the basis of qualified immunity. The district court deferred ruling and the officials appealed. The appeals court dismissed the action, finding that it did not have jurisdiction over the appeal. The court held that the inmate's factual allegations, if true, would be sufficient to establish prison officials' liability for an Eighth Amendment violation and to overcome a qualified immunity defense, and that further clarification of the facts was necessary for the district court to rule on the prison officials' qualified immunity defense. The mother of the inmate alleged that officials subjected the inmate to dangerous heat conditions in conscious disregard of the serious risk that the heat posed for prisoners who, like the inmate, suffered from certain medical conditions, took certain medications, and had recently been transferred from air-conditioned jails to non-climate-controlled facilities. The mother alleged that the officials had promulgated and had power to change policies that allegedly caused the inmate's death, and the Eighth Amendment right not to be subjected to extremely dangerous temperatures without adequate ameliorative measures had been clearly established at the time of inmate's death. (Garza West Unit, Texas Department of Criminal Justice)</p>

<p>U.S. District Court WRONGFUL DEATH MEDICAL CARE</p>	<p><i>Hobbs v. Powell</i>, 138 F.Supp.3d 1328 (N.D. Ala. 2015). The personal representative of a jail inmate's estate filed suit against the county sheriff, the captain in charge of jail guards, guards, and the physician contracted to provide health care services for the jail population, asserting claims for wrongful death, deliberate indifference to the inmate's serious medical needs, and a state law claim against the physician for medical malpractice. The jail defendants filed a motion to dismiss on the grounds of immunity, and the physician filed a motion to dismiss for failure to state claims. The district court denied the motions. The court held that: (1) the amended Alabama statute that extended qualified immunity of a sheriff and sheriff's deputies to corrections officers working in sheriffs' jails was a constitutionally permissible exercise by Alabama Legislature of its broad police power; (2) immunity under Alabama's Jailer Liability Protection Act required findings that jail personnel were acting within the scope of their official duties and that they were acting in compliance with law; (3) the personal representative adequately alleged the inmate's serious medical need; (4) the personal representative adequately alleged that the physician had subjective knowledge of, but failed to treat the inmate for an abscessed tooth; (5) the personal representative adequately alleged that the physician's failure to examine or provide any treatment to the inmate for an abscessed tooth was the cause of the inmate's death; and (6) the allegations stated a claim against the physician for medical malpractice under the Alabama Medical Liability Act. The personal representative alleged that the inmate submitted medical request forms through jail personnel for treatment of an abscessed tooth, that the physician ignored the requests, that a toothache caused noticeably severe swelling that required immediate medical attention, that inmate's pain and swelling was such that any reasonable person would know that he required immediate medical attention, and that, at some time before the inmate's release from jail several days later, the physician and/or agents of the entity that provided physician services to the jail observed the inmate through the window of a locked door but did not examine him in any way or refer him for any care. The inmate died at a hospital within hours after being released from the jail. (Winston County Jail, (Correctional Managed Care Consultants, LLC, and Winston County Jail, Alabama)</p>
<p>U.S. Appeals Court SEXUAL ASSAULT OFFICER ON PRISONER ASSAULT</p>	<p><i>Hughes v. Farris</i>, 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)</p>
<p>U.S. Appeals Court SUICIDE</p>	<p><i>Jackson v. West</i>, 787 F.3d 1345 (11th Cir. 2015). The estate of a detainee who committed suicide while in the custody of a county jail brought a § 1983 action against a county sheriff and against 10 corrections officers, alleging violation of the detainee's due process rights. The district court granted summary judgment in favor of three officers on qualified immunity grounds, but denied summary judgment on qualified immunity grounds with respect to the remaining officers. The remaining officers filed an appeal. The appeals court reversed, finding that the officers lacked a subjective knowledge of a strong risk that the detainee would attempt suicide, so that the officers did not act with deliberate indifference in failing to prevent the suicide. The court noted that the detainee had made explicit suicide threats and he was placed in the suicide prevention unit, as was proper protocol, and the detainee was released from that unit when prison medical staff later determined that he no longer presented such a risk. The court stated: "This case is troubling. The Marion County Jail tragically failed to keep Mr. James safe while he was incarcerated. Under our precedent, however, an officer is liable under § 1983 for the suicide of an inmate only if he had subjective knowledge of a serious risk that the inmate would commit suicide and he disregarded that known risk." (Marion County Jail, Florida)</p>
<p>U.S. District Court RELEASE PROTECTION FROM HARM</p>	<p><i>Kruger v. Nebraska</i>, 90 F.Supp.3d 874 (D. Neb. 2015). A murder victim's husband and the administrator of her estate brought an action in state court against the state of Nebraska, the Department of Correctional Services, and several corrections officers, asserting § 1983 claims, due process violations, and various negligence claims arising out of the release of a prisoner who murdered the victim shortly after his release from prison. The defendants removed the case to federal court and moved for dismissal. The district court granted the defendants' motion for dismissal, finding that the officers did not have a special relationship with the victim that created an affirmative duty, under the due process clause, to protect her, the officers were acting solely within the scope of their employment when they released the prisoner, and thus the husband could not assert claims under state law against the officers in their individual capacities. The court noted that the officers were engaged in discretionary functions when they released the prisoner, and thus were shielded from liability. (Nebraska Department of Correctional Services)</p>
<p>U.S. Appeals Court PRISONER ON PRISONER ASSAULT SEXUAL ASSAULT</p>	<p><i>Lee v. Willey</i>, 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)</p>
<p>U.S. Appeals Court MEDICAL CARE WRONGFUL DEATH</p>	<p><i>Letterman v. Does</i>, 789 F.3d 856 (8th Cir. 2015). Parents of a deceased prisoner, who died from injuries suffered while in jail, brought a § 1983 action against a prison sergeant, lieutenant, and case manager, alleging that the employees were indifferent to the prisoner's medical needs. The prisoner had been arrested for possession of</p>

marijuana and was given a 120 “shock sentence” in confinement. He became suicidal and was transferred to a padded cell at the request of mental health personnel. He was to have been personally observed every 15 minutes by staff and procedure required the prisoner to give a verbal response each time. After a shift change, the oncoming officer decided to monitor the prisoner via closed circuit television rather than making the required in-person rounds. During the shift, the prisoner injured himself in the cell and eventually died from his injuries. The district court denied the employees’ motion for summary judgment, based on assertions of qualified immunity. The employees appealed. The appeals court held that summary judgment was precluded by genuine issues of material fact as to whether a prison sergeant, who was in charge of the unit where prisoner was kept, and a lieutenant, were deliberately indifferent to the risk of harm to the prisoner who died from injuries allegedly sustained in a padded cell. (Missouri Western Reception, Diagnostic and Correction Center)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT
SEXUAL ASSAULT
PROTECTION FROM
HARM

Makdessi v. Fields, 789 F.3d 126 (4th Cir. 2015). A prisoner brought an action against prison officials, claiming that the officials failed to protect the prisoner from repeated physical and sexual abuse by other prisoners, even after the prisoner lodged numerous complaints, in violation of the prisoner’s Eighth Amendment right to be free from cruel and unusual punishment. The district court entered judgment for the prison officials and the prisoner appealed. The appeals court vacated and remanded. The court noted that “...the Supreme Court has stated, however, that the subjective ‘actual knowledge’ standard required to find prison officials deliberately indifferent to a substantial risk of serious injury may be proven by circumstantial evidence. Prison officials may not simply bury their heads in the sand and thereby skirt liability. Rather, they may be held accountable when a risk is so obvious that it had to have been known. Because we do not believe that the court below appreciated this nuance, we vacate the dismissal of Makdessi’s claims...” (Wallens Ridge State Prison, Virginia)

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

McBride v. Lopez, 791 F.3d 1115 (9th Cir. 2015). After a prison’s appeals coordinator dismissed a prisoner’s administrative grievance as untimely, the prisoner brought an action against prison guards under § 1983 claiming violation of the Eighth Amendment by use of excessive force against him, under the provisions of the Prison Litigation Reform Act (“PLRA”). The district court granted the guards’ motion to dismiss and the prisoner appealed. The appeals court affirmed. The appeals court noted that a two-part test for determining whether a threat to a prisoner rendered the prison grievance system unavailable had been developed by the 11th Circuit, requiring the prisoner to provide a basis for the court to find that he actually believed prison officials would retaliate against him if he filed a grievance, and if he makes such a showing, he must then demonstrate that his belief was objectively reasonable. The court found that the prisoner subjectively believed that the guards’ statements were a threat, where the prisoner had recently been beaten by the guards that made the statement, and the prisoner could have believed the guards bore him considerable hostility and therefore the statement could have been interpreted as threatening. But the court found that the statement could not have reasonably been objectively viewed as a threat of retaliation if the prisoner filed a grievance against the guards, where there was no allegation or evidence that the guards believed the prisoner was contemplating filing a grievance, and the prisoner had not asked for the materials necessary to file a grievance or had given any indication he intended to file a grievance. (Pleasant Valley State Prison, California)

U.S. Appeals Court
OFFICER ON PRISONER
ASSAULT

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 reasonably 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
OFFICER ON PRISONER
ASSAULT

Nagy v. Corrections Corporation of America, 79 F.Supp.3d 114 (D.D.C. 2015). A female detainee brought an action in the District of Columbia Superior Court against the operator of a correctional facility, alleging negligence, negligent supervision, negligent infliction of emotional distress, and intentional infliction of emotional distress. The operator moved the action to federal court and moved for summary judgment. The district court denied the motion, finding that summary judgment was precluded by genuine issues of material fact as to: (1) whether the operator caused the detainee’s injuries stemming from a second alleged assault by failing to follow up on the first alleged assault by guards at the correctional facility; (2) whether the detainee was injured by outrageous behavior of the guards; (3) whether the guards negligently handled the detainee, and (4) whether this negligence physically injured the detainee. The detainee alleged that she was abused almost immediately upon arrival at the facility, when two correctional officers grabbed her by the arms, took her to a locked cell, and threw her against the commode. She alleged that she landed sideways on her back, and that the officers kicked her on her right side, broke her ribs, and bruised her body. She reported the incident to corrections officials. Six days later, she was once again allegedly assaulted “by staff and officers.” She showed her injuries to a doctor who observed bruises on her buttocks and hips “of varying stages, none that appeared newer than 2–3 days old with some yellowing and fading.” (Correctional Treatment Facility, Corrections Corporation of America, District of Columbia)

U.S. District Court
SEXUAL ASSAULT

Pena v. Greffet, 110 F.Supp.3d 1103 (D.N.M. 2015). A female prison inmate brought an action under § 1983 for numerous violations of her constitutional rights, including under the Fourth, Eighth, and Fourteenth Amendments against employees of the contractor that operated the correctional facility, and against the contractor under the theory of vicarious liability, for alleged physical and sexual assault by employees while she was incarcerated. The defendants moved for judgment on the pleadings. The district court denied the motion. The court held that the “aided-in-agency” theory of vicarious liability applied to the female prison inmate’s claims under § 1983 against the contractor after the contractor’s employee repeatedly sexually assaulted the inmate. According to the court, the employee’s relationship with the inmate by virtue of his employment conferred “extraordinary power” upon him, the employee’s authority to do as he wished appeared to be delegated to him, and the inmate was unlikely to be able to successfully complain about the employee’s actions. The court noted that the issue of whether the employer was vicariously liable for the employee’s repeated rape and sexual assault of the inmate was for a jury to decide in the inmate’s claim under § 1983 for violations of numerous constitutional rights, including the right to bodily integrity under the Fourteenth Amendment. (New Mexico Women’s Correctional Facility, operated by Corrections Corporation of America)

U.S. District Court
PRISONER ON PRISONER
ASSAULT

Perry v. Dickhaut, 125 F.Supp.3d 285 (D. Mass. 2015). A state prisoner brought a § 1983 action against prison officials and a prison nurse, asserting Eighth Amendment claims for excessive force in attempting to double-bunk the prisoner. The district court granted the motions in part and denied in part. The court held that prison officials did not act with deliberate indifference to the risk of serious harm from prisoner violence, as would violate the Eighth Amendment, by repeatedly double-bunking the prisoner in a cell with another prisoner. According to the court, there was no evidence that the officials knew or should have known that the prisoner and his cellmates were enemies, and making an exception to the double-bunk system for one inmate simply because he was purposefully disruptive would pose substantial risks for the overall management of prison. (Souza-Baranowski Correctional Center, Massachusetts)

U.S. District Court
PRISONER ON PRISONER
ASSAULT
MEDICAL CARE

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
OFFICER ON PRISONER
ASSAULT
USE OF FORCE

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. Appeals Court
MEDICAL CARE
WRONGFUL DEATH

Shadrick v. Hopkins County, Ky., 805 F.3d 724 (6th Cir. 2015). The mother of deceased inmate brought a § 1983 action against a county and a medical provider, which contracted with county to provide medical services to county inmates, alleging that the medical provider’s failure to train and supervise its nurses violated the inmate’s constitutional right to adequate medical care and that the medical provider was negligent under state law. The twenty-five year old inmate had entered the jail to serve a short sentence for a misdemeanor offense. He died three days later from complications of an untreated methicillin-resistant staphylococcus aureus (MRSA) infection. The district court granted summary judgment in favor of the medical provider. The mother appealed. The appeals court reversed and remanded. The court held that summary judgment was precluded by genuine issues of material fact as to whether the medical provider’s training program was inadequate, whether the inadequacy resulted from its deliberate indifference to inmate’s right to adequate medical care, and whether the inadequacy caused, or was closely related to, the inmate’s death. The court noted that the nurses were required to make professional judgments outside their area of medical expertise, and unless training was provided, the nurses lacked knowledge about the constitutional consequences of their actions or inactions in providing medical

care to inmates.

The court found that the medical provider did not derive its existence and status from the county, and thus was not entitled to share the county's governmental immunity on a Kentucky negligence claim. The court noted that nearly all of the inmate's medical conditions-- high blood pressure, rheumatoid arthritis, gout, osteoporosis, and staph infection-- had been diagnosed by a private physician as mandating treatment, and deputy jailers could tell that the inmate needed prompt medical treatment even though they did not have the same medical training as the nurses who were employed at the county jail. (Hopkins County Detention Center, Southern Health Partners, Inc., Kentucky)

U.S. District Court
SUICIDE
SUPERVISION

Shaidnagle v. Adams County, Miss., 88 F.Supp.3d 705 (S.D.Miss. 2015). After a detainee committed suicide while being held in a county jail, his mother, individually, on behalf of the detainee's wrongful death beneficiaries, and as administratrix of the detainee's estate, brought an action against the county, sheriff, jail staff, and others, asserting claims for deprivation of civil rights, equitable relief, and declaratory judgment. The defendants brought a § 1988 cross-claim for attorney fees and costs against the plaintiff, and subsequently moved for summary judgment. The court held that neither the sheriff nor another alleged policymaker could be held liable on a theory of supervisory liability for failure to train or supervise, where the mother did not show that the training jail staff received was inadequate, and the policy in place to determine whether the detainee was a suicide risk was not the "moving force" behind a constitutional violation. The court held that the correct legal standard was not whether jail officers "knew or should have known," but whether they had gained actual knowledge of the substantial risk of suicide and responded with deliberate indifference. The court held that neither party was entitled to attorney fees as the "prevailing party." (Adams County Jail, Mississippi)

U.S. District Court
INJURY
MEDICAL CARE

Shehee v. Saginaw County, 86 F.Supp.3d 704 (E.D.Mich. 2015). A diabetic inmate at a county jail, who fainted due to low blood sugar and broke his neck, brought a § 1983 action against the county and the private contractor that provided medical services to the jail, alleging deliberate indifference to his serious medical needs in violation of the Eighth Amendment. The defendants moved for summary judgment. The district court granted the motion. The court held that the jail's medical director did not have authority to make a final policy regarding medical decisions, as required to hold the contractor and county liable under § 1983. The court found that the director's alleged practices of having limited contact with inmates, providing occasional care, and providing phoned-in treatment did not show deliberate indifference. (Saginaw County Jail, Michigan)

U.S. District Court
SUICIDE
STAFFING

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
USE OF FORCE
PROTECTION FROM
HARM

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

U.S. District Court
WRONGFUL DEATH
MEDICAL CARE

Stojcevski v. County of Macomb, 143 F.Supp.3d 675 (E.D. Mich. 2015). A former county jail inmate, individually and as the administrator of the estate of his brother, who died after being incarcerated at the same jail, brought an action against a county, county officials and employees, the jail's private medical provider, and the provider's employees, alleging deliberate indifference to medical needs and municipal liability under § 1983 and gross negligence under state law. The defendants moved to dismiss. The court held that the employees' delegation of medical care of the inmate to an outside contractor did not entitle them to qualified immunity on Eighth Amendment deliberate indifference claims arising from the inmate's death. According to the court, regardless of the county's reliance on the contractor, if the employees were aware of a risk to the inmate's health, drew the inference that a substantial risk of harm to the inmate existed, and consciously disregarded that risk, they too would be liable for the inmate's injuries under § 1983.

The court found that allegations by the administrator of the estate were sufficient to state a *Monell* claim

against the county and the jail's private medical provider for municipal liability under § 1983. The court noted that although many of the policies and procedures set forth by the administrator in support of his claim, such as failure to adhere to national standards, did not state a constitutional violation, the examples of where such standards were not followed were factual allegations supporting his assertion that inmates at the jail were not afforded adequate medical treatment. (Macomb County Jail, Michigan)

U.S. Supreme court
SUICIDE

Taylor v. Barkes, 135 S.Ct. 2042 (2015). The widow of a deceased inmate brought a § 1983 action against the commissioner of a state department of correction (DOC), the warden of a state correctional institution, and others, alleging that they violated the Eighth Amendment in failing to prevent the inmate's suicide. The district court denied the commissioner's and warden's motion for summary judgment based on qualified immunity. The commissioner and warden appealed. The appeals court affirmed. The U.S. Supreme Court reversed, finding that any right of an incarcerated person to proper implementation of adequate suicide prevention goals was not clearly established at the time of the inmate's death, and, thus, the commissioner and warden were qualifiedly immune from the widow's claim. (Howard R. Young Correctional Institution, Delaware)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Tidwell v. Hicks, 791 F.3d 704 (7th Cir. 2015). A state inmate brought a § 1983 action against prison officers, alleging they violated his Eighth Amendment rights when they failed to protect him from an attack by a fellow inmate and then subjected him to excessive force by restraining him during the attack. The district court granted judgment as a matter of law for two of the officers and, following a jury verdict, entered judgment in the third officer's favor. The inmate appealed. The appeals court affirmed, finding that the inmate failed to show that the officers knew that the inmate was at risk of serious harm. (Pinckneyville Correctional Center, Illinois)

U.S. Appeals Court
SEXUAL ASSAULT
PRISONER ON PRISONER
ASSAULT

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. District Court
SEXUAL ASSAULT

Vincent v. Sitnewski, 117 F.Supp.3d 329 (S.D.N.Y. 2015). A New York inmate brought a § 1983 action against prison officers, alleging claims for First Amendment retaliation and failure to protect under the Eighth Amendment. The officers moved for summary judgment. The district court granted the motion in part and denied in part. The court held that summary judgment was precluded by genuine issues of material fact as to whether the alleged sexual groping by a prison officer would have deterred a person of "ordinary firmness" from exercising his constitutional rights, and as to whether the officer who allegedly groped the inmate was motivated by retaliatory purpose.

The court found that summary judgment was precluded by genuine issues of material fact as to whether a prison officers' alleged intrusion on the inmate's shower, removal of a shower curtain and the inmate's clothes, and conduct of leaving the inmate standing naked in the shower room for approximately one hour, would have deterred a person of "ordinary firmness" from exercising his constitutional rights, and as to whether the officer who allegedly groped the inmate was motivated by a retaliatory purpose.

According to the court, summary judgment was also precluded by genuine issues of material fact as to whether a prison officer's conduct of entering the inmate's cell and warning the inmate that if he filed any more grievances, or if the officer caught him doing "any of that Muslim stuff around here," the officer was going to "jump" him, would have deterred a person of "ordinary firmness" from exercising his constitutional rights. The court found that the inmate's allegations that prison officers handcuffed him to a bedpost for 18 hours, purportedly as payback for filing grievances, even if improbable, were neither fanciful, fantastic, nor delusional, precluding summary judgment on the ground of factual frivolousness on the inmate's § 1983 claim for First Amendment retaliation arising from such conduct. The court noted that the inmate did not contradict himself and his allegations were quite serious, as they showed officers using their power to threaten and dehumanize an inmate they were supposed to protect. (Green Haven Correctional Facility, New York)

U.S. District Court
SUICIDE
MEDICAL CARE

White v. Washington County, Tenn., 85 F.Supp.3d 955 (E.D.Tenn. 2015). The mother of a county jail detainee who committed suicide in custody brought an action against the county, county sheriff, and the private contractor that provided health care services to county jail inmates, alleging federal constitutional claims and state-law negligence claims. The defendants moved to dismiss. The court held that claims against the private health care provider were "health care liability claims," under Tennessee law, for which the mother was required to file certificate of good faith and a pre-suit notice of a potential claim, where the mother asserted that the provider failed to properly assess or provide adequate care for detainee's mental health issues. (Washington County Jail, Tennessee)

U.S. Appeals Court
PRISONER ON PRISONER
ASSAULT

Williams v. Hampton, 797 F.3d 276 (5th Cir. 2015). Inmates and parents of a deceased inmate, as wrongful death beneficiaries, brought a § 1983 action against a state correctional officer for the death of one inmate and the injuries of two other inmates arising out of an inmate-on-inmate attack. The district court entered judgment against the officer and she appealed. The appeals court reversed, finding that the corrections officer who was guarding a prison exercise yard was not deliberately indifferent to a substantial risk of inmate-on-inmate violence when she failed to ascertain if her single-shot, nonlethal block gun was loaded and later took two rubber bullets for the gun with her back into the prison building and did not give them to the officer who relieved her. According to the court, although three inmates were subsequently attacked by other inmates who escaped from

their exercise pens, there was no evidence that the officer realized that the gun was unloaded, that she knew there was a risk that inmates could escape from the pens, or that a loaded block gun could have prevented the assaults. (State Penitentiary in Parchman, Mississippi)

U.S. District Court
OFFICER ON PRISONER
ASSAULT

Wilson v. Hauck, 141 F.Supp.3d 226 (W.D.N.Y. 2015). A former inmate brought a § 1983 action against corrections officers alleging they violated his rights by use of excessive force and/or by failing to protect him from that excessive force. The inmate moved for sanctions for alleged spoliation of evidence. The district court granted the motion. The court held that: (1) officers at one point possessed and had the ability to preserve original photographs of the inmate's injuries and the original videotape of his cell extraction; (2) officers were at least negligent with respect to the destruction or loss of both the original photographs and the videotape; and (3) differences between the originals and the copies were sufficient to permit a reasonable trier of fact to conclude that the originals would support inmate's claims. (Attica Correctional Facility, New York)

U.S. District Court
MEDICAL CARE
SUPERVISION

Woodson v. City of Richmond, Virginia, 88 F.Supp.3d 551 (E.D.Va. 2015). A city jail inmate brought an action against city, sheriff, and deputies, alleging deliberate indifference to the inmate's medical needs during a severe heat wave. The sheriff moved for summary judgment. The district court held that summary judgment was precluded by genuine issues of material fact as: (1) whether the sheriff instituted a policy of confining inmates with medical issues to their cells during mealtime, denying the inmates access to air conditioning in the dining hall; (2) whether the sheriff's decisions to keep inmates confined would qualify as a policy; (3) whether the sheriff was subjectively aware that conditions at the jail posed a substantial risk of harm to inmates; (4) whether the sheriff was subjectively aware that his response to the risks posed to inmates by excessive heat was inadequate; (5) whether the sheriff's policy caused the inmate's injuries; (6) whether the sheriff's alleged failure to investigate two instances of heat-related deaths at the jail, was not persistent and widespread; and (7) whether the sheriff had at least a constructive knowledge of his deputies' alleged failure to perform required 30-minute security checks at a flagrant and widespread level. (Richmond City Jail, Virginia)

