

Detention and Corrections

CASELAW QUARTERLY

Issue No. 39

October 2006

This issue of *Detention and Corrections Caselaw Quarterly* (DCCQ) provides summaries of 62 federal court decisions published in the three-month period ending September 2006.

PART 1 provides complete case summaries in alphabetical order.

PART 2 presents the case summaries according to major topics, using the same organization and format as the *Detention and Corrections Caselaw Catalog*. The left margin describes the level of court and identifies subtopics for each case summary. This issue of DCCQ may be used as the *Third Interim Supplement* for the Eighteenth Edition of the *Caselaw Catalog* (2006).

CONTENTS

PART 1: Complete Case Summaries.....	1		
PART 2: Summaries by Major Topics..	19		
1. Access to Courts.....	19	26. Juveniles.....	33
2. Administration.....	21	27. Liability.....	33
3. Administrative Segregation.....	21	28. Mail.....	35
4. Assessment of Costs.....	22	29. Medical Care.....	35
5. Attorney Fees.....	22	30. Mental Problems (Prisoner).....	39
6. Bail.....	22	31. Personnel.....	39
7. Civil Rights.....	22	32. Pretrial Detention.....	40
8. Classification & Separation.....	24	33. Privacy.....	44
9. Conditions of Confinement.....	24	34. Programs-Prisoner.....	44
10. Cruel and Unusual Punishment.....	25	35. Property-Prisoner Personal.....	45
11. Discipline.....	26	36. Release.....	45
12. Exercise and Recreation.....	26	37. Religion.....	46
13. Ex-Offenders.....	26	38. Rules & Regulations-Prisoner.....	47
14. Failure to Protect.....	26	39. Safety and Security.....	47
15. Facilities.....	28	40. Sanitation.....	48
16. False Imprisonment/Arrest.....	28	41. Searches.....	48
17. Female Prisoners.....	29	42. Services-Prisoner.....	49
18. Food.....	29	43. Sentence.....	49
19. Free Speech, Expression, Assoc.....	29	44. Standards.....	49
20. Good Time.....	30	45. Supervision.....	50
21. Grievance Procedures, Prisoner.....	30	46. Training.....	50
22. Habeas Corpus.....	31	47. Transfers.....	50
23. Hygiene-Prisoner Personal.....	32	48. Use of Force.....	51
24. Immunity.....	32	49. Visiting.....	51
25. Intake and Admissions.....	32	50. Work-Prisoner.....	51
		TABLE OF CASES.....	53

CRS, Inc. A Non-Profit Organization Serving Corrections Since 1972

925 Johnson Drive Gettysburg, PA 17325 (717) 338-9100 fax (717) 549-3419 www.correction.org

Published in association with the American Jail Association

All Rights Reserved

PART 1: Complete Case Summaries in Alphabetical Order

Part 1 presents complete summaries for each case, alphabetically by year published. The major topic section and subtopics are identified before each case summary. This format makes it easier for the reader to review every case. *Part 2* presents the summaries under each of the 50 major topic areas.

- =====
- 1. ACCESS TO COURT: PLRA-Prison Litigation Reform Act, Exhaustion
 - 27. LIABILITY: FTCA- Federal Tort Claims Act, Negligence
 - 29. MEDICAL CARE: Failure to Provide Care, Inadequate Care
 - 32. PRETRIAL DETENTION: Medical Care

Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). A detainee brought an action against the United States Marshals Service, various county jails where he was detained, doctors in a federal prison, a private medical center, a private doctor, and others, alleging claims under § 1983 and the Federal Tort Claims Act (FTCA), and alleging negligence under state law. The district court dismissed the action and the detainee appealed. The appeals court affirmed. The court held that filing of an administrative claim with the United States Marshals Service was insufficient to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA), for the purpose of § 1983 claims against county jails and a federal prison doctor. The court noted that administrative claims against the county jails had to be directed to those facilities, and claims alleging wrongdoing by a doctor at a federal prison had to be filed with the federal Bureau of Prisons. The court ruled that FTCA claims against county facilities were barred by the independent contractor exemption of the FTCA. According to the court, allegations did not state deliberate indifference claims against a private medical center or a private doctor with allegations that someone at a private medical center overmedicated him, and that a private doctor failed to properly diagnose the severity of his foot injury. The detainee had been arrested on federal drug and firearm charges and he was held without bail. During his pretrial detention, the United States Marshals Service lodged him in several county jail facilities with which it contracts, and he also spent time in two federal facilities. (Hillsborough County Department of Corrections, NH; Cumberland County Jail, Maine; Merrimack County House of Corrections, NH; FMC Rochester, MN; Strafford County House of Corrections, NH; FCI Raybrook, NY)

- 1. ACCESS TO COURT: Access to Counsel
- 7. CIVIL RIGHTS: Access to Court, Aliens
- 22. HABEAS CORPUS: Access to Courts, Alien

Adem v. Bush, 425 F.Supp.2d 7 (D.D.C. 2006). In a habeas case, the petitioner, who was detained at the United States Naval Base in Guantanamo Bay, Cuba, filed a motion to hold federal respondents in contempt of a protective order governing access to counsel for Guantanamo detainees and a motion to expedite his access to counsel. The district court held that the protective order did not require evidence of authority to represent a detainee as a prerequisite to counsel meeting with a detainee, but rather, the protective order provided that counsel who purportedly represented a particular detainee provide evidence of their authority to represent that detainee within 10 days of counsel's second visit with the detainee. (United States at the Naval Base, Guantanamo Bay, Cuba)

- 31. PERSONNEL: ADA- Americans with Disabilities Act, Termination

Almond v. Westchester County Dept. of Corrections, 425 F.Supp.2d 394 (S.D.N.Y. 2006). A probationary corrections officer who was terminated after she displayed hysterical behavior and underwent a psychiatric evaluation following training in disturbance control and use of a baton, brought an action against a county Department of Corrections (DOC) alleging wrongful discharge in violation of Americans with Disabilities Act (ADA) and New York State Human Rights Law (NYSHRL). The employer moved for summary judgment and the district court granted the motion. The court held that the officer failed to establish a prima facie case of disability discrimination under ADA, on the theory that the employer perceived her to be either a drug addict or mentally ill, where she did not prove that the employer perceived her to be drug addict despite her statement that she had overmedicated herself, her admission to taking some sort of drug on the day of the

subject incident, and her superior's order that a drug test be administered, and assuming that the employer perceived her to be mentally ill. The court concluded that she did not show that the employer believed she was impaired from working or from performing some other major life activity. The employer alleged that the plaintiff complained that the exercises were "too hard," and asserted that she had been exhibiting nervous and erratic behavior throughout the day, crying and complaining that the training was too tough. The court declined to exercise supplemental jurisdiction over the officer's remaining claim under NYSHRL, instead dismissing it without prejudice. (Department of Corrections for Westchester County, New York)

29. MEDICAL CARE: Deliberate Indifference, Failure to Provide Care

Ammons v. Lemke, 426 F.Supp.2d 866 (W.D.Wis. 2006). A state inmate filed a § 1983 action alleging that a prison's medical officials were deliberately indifferent to his serious medical conditions. The district court held that the inmate's wrist injury constituted a "serious medical condition," for the purposes of his Eighth Amendment claim against prison medical officials for deliberate indifference, where the injury was diagnosed as a fracture of his ulnar styloid process, the injury caused his bone structure to split, the wrist sustained permanent injury and bone disfigurement, and the injury continued to cause him pain. The court found that a physician's failure to immediately prescribe pain medication for the inmate or to make an appointment for the inmate to see an orthopedic specialist after examining the inmate's fractured wrist did not demonstrate deliberate indifference to inmate's serious medical condition necessary to establish claim under Eighth Amendment, where the physician examined the inmate twice in one month's time, reviewed an x-ray of his wrist, determined initially that no treatment was possible because the injury was the result of old fracture, but later prescribed pain medication and arranged for the inmate to see an orthopedic specialist. (Stanley Correctional Institution, Wisconsin)

7. CIVIL RIGHTS: ADA- Americans with Disabilities Act

9. CONDITIONS OF CONFINEMENT: Hearing Impaired

29. MEDICAL CARE: Hearing Impaired, ADA- Americans with Disabilities Act

Arce v. O'Connell, 427 F.Supp.2d 435 (S.D.N.Y. 2006). A purportedly hearing-impaired inmate brought a pro se suit against employees of a corrections department, alleging that they violated his rights under the Americans with Disabilities Act (ADA), as well as the Eighth and Fourteenth Amendments, by failing to provide reasonable accommodations for his hearing impairment and retaliating against him after he filed grievances regarding the lack of such accommodations. The defendants moved for summary judgment and the court dismissed the case. The district court held that the inmate was not a member of the class protected by a consent decree addressing the treatment of deaf or hard-of-hearing inmates and thus, he lacked standing to move for contempt alleging violations of the decree. The court found that to the extent the inmate suffered from a hearing loss, it was not such as would prevent him from participating fully in "activities, privileges, or programs" as required for him to come within the protections of the consent decree. (New York State Department of Correctional Services)

22. HABEAS CORPUS: Segregation, Programs

34. PROGRAMS- PRISONER: Drug/Alcohol

Barq v. Daniels, 428 F.Supp.2d 1147 (D.Or. 2006). A federal prisoner filed a petition for a writ of habeas corpus, alleging that his removal from his originally assigned class under the Bureau of Prisons' (BOP) drug and alcohol treatment program (DAP), and subsequent placement into another class that graduated on a later date violated his constitutional rights. The district court held that it was arbitrary and capricious and an abuse of discretion for BOP to rely exclusively on the number of sessions that it forced the petitioner to miss in deciding to remove the prisoner from his original DAP class. The prisoner had been placed in a special housing unit (SHU) through no fault of his own, and he missed classes as a result. The court noted that had the prisoner been permitted to rejoin his class, as of graduation he would have completed more sessions than seventy-five percent of the other DAP participants. (FCI Sheridan, Oregon)

14. FAILURE TO PROTECT: Prisoner on Prisoner 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)

31. PERSONNEL: Termination, Racial Discrimination, Title VII, Free Speech

Burke-Fowler v. Orange County, Fla., 447 F.3d 1319 (11th Cir. 2006). A former correctional officer brought an action against a county alleging that her termination was racially discriminatory, in violation of Title VII and § 1981, and was based on her marital status in violation of state law. The district court granted the county's motion for summary judgment and the officer appealed. The appeals court affirmed, finding that the African-American officer failed to establish that her discharge for developing an intimate romantic relationship with, and later marrying, an inmate, in violation of a prison's anti-fraternization policy, was the result of racial discrimination and that the county did not discriminate against the officer simply because she was married, in violation of the Florida Civil Rights Act. The court noted that even though white officers who had close relationships with inmates were not as severely disciplined, one white officer developed the relationship with a former inmate without the knowledge of her partner's criminal history, another white officer had established his relationship with an inmate prior to her arrest, and two other white officers had relationships that were not romantic, while the African-American officer's relationship with an inmate commenced with her full awareness of his status as an inmate and she pursued the relationship shortly after he left her direct authority. (Orange County Corrections Department, Florida)

19. FREE SPEECH, EXPRESSION AND ASSOCIATION: Publications, Newspapers

38. RULES AND REGULATIONS- PRISONER: Publications

Calia v. Werholtz, 426 F.Supp.2d 1210 (D.Kan. 2006). A former state prison inmate, proceeding pro se, brought a § 1983 action against corrections officials, alleging that their enforcement against him of rules restricting certain inmates' ability to subscribe to newspaper, magazine, and newsletter publications violated his First Amendment rights. The court granted summary judgment for the officials. The court held that the inmate's claims for injunctive relief were moot and that the officials were entitled to Eleventh Amendment immunity insofar as the inmate's action sought monetary damages and was brought against the officials in their official capacities. The court found that the officials were entitled to qualified immunity because enforcement of the rules did not violate a clearly established constitutional right. (Lansing Correctional Facility, Kansas)

14. FAILURE TO PROTECT: Suicide

17. FEMALE PRISONERS: Suicide

29. MEDICAL CARE: Suicide

32. PRETRIAL DETENTION: Suicide

Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who committed suicide in a holding cell brought a state court action against a city and officers, alleging deliberate indifference to the detainee's serious medical needs. The case was removed to federal court and the defendants moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide, given that she had not threatened or attempted suicide and that her intoxication was not per se indicative of a suicidal tendency. The court noted that there was no indication that the officers knew or should have known of any such vulnerability, given that the detainee had been detained in a holding cell on previous occasions without incident. The court held that the city was not liable for indifference based on its policies for identifying detainees at increased risk for suicide, where the city did not have a history of numerous suicides by detainees, the city had policies for removing harmful items from detainees and, following previous suicides in a holding cell, the city took corrective action by placing a video monitor in the cell. The court noted that a police department is under no Eighth Amendment duty to install a video monitoring system in an effort to prevent suicides in holding cells. (Scranton Police Department, Pennsylvania)

31. PERSONNEL: Title VII, Demotion, Racial Discrimination

Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971 (7th Cir. 2006). A state corrections employee brought an action against the agency and supervisors under Title VII and § 1983, alleging that he was demoted because of his race. The district court entered judgment upon jury verdict in favor of the employee, and defendants appealed. The appeals court affirmed,

finding that evidence was sufficient to support the jury's verdict in favor of the employee. The court noted that although there was no direct evidence that the agency and supervisors were motivated by racial bias when they demoted the employee after he was found to have harassed a co-worker, an agency memo drafted and approved by the supervisors indicated that the employee's violation was a category B violation. Two white employees received far less severe penalties for category B violations, and testimony that the supervisors thought the employee's violation was more serious than category B came from the supervisors rather than from disinterested witnesses and was not supported by documentary evidence. (Jackson Correctional Institution, Wisconsin)

- 7. CIVIL RIGHTS: Sex Offenders
- 13. EX-OFFENDER: 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)

- 14. FAILURE TO PROTECT: Suicide Attempt
- 32. PRETRIAL DETENTION: Suicide Attempt, Supervision
- 45. SUPERVISION: Cell Checks

Drake ex rel. Cotton v. Koss, 445 F.3d 1038 (8th Cir. 2006). The legal guardian for an incapacitated person who attempted to commit suicide while he was a pretrial detainee in a county jail, and a state department of human services sued a county and various officials in their individual and official capacities under § 1983, alleging violations of the Eighth and Fourteenth Amendments, and asserted a state law claim for negligence. The district court granted the defendants' motion for summary judgment 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)

- 29. MEDICAL CARE: ADA- Americans with Disabilities Act, Rehabilitation Act,
AIDS- Acquired Immune Deficiency Syndrome, Transportation
- 32. PRETRIAL DETENTION: Medical Care
- 47. TRANSFERS: Transportation

Dukes v. Georgia, 428 F.Supp.2d 1298 (N.D.Ga. 2006). A pretrial detainee brought an action against state and county defendants as well as jail personnel, alleging deliberate indifference to a serious medical need, violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and medical malpractice. The defendants filed motions for summary judgment. The court held that jail personnel did not violate the Americans with Disabilities Act (ADA) or the Rehabilitation Act when an officer and others allegedly told other inmates of the detainee's status as an HIV infected person, where the detainee did not show that such disclosure denied him the benefits of any program or service or that it discriminated against him. The court also found no ADA or Rehabilitation Act violation when an officer did not place a mask on the detainee when he was being transported to the hospital, where the failure to place a mask on the detainee did not deny him the benefits of any program or service or discriminate against him. The court noted that transportation can be construed as a "program or service provided by the public entity" for the purposes of Title II of the Americans with Disabilities Act (ADA). According

to the court, even if a physician's failure to diagnose the pretrial detainee's cryptococcus was negligent or even severely negligent, her actions and treatment of the detainee did not constitute deliberate indifference to the detainee's serious medical needs in violation of due process where the detainee was receiving treatment for his symptoms and his underlying illness, HIV, and while in hindsight it appeared that a lesion shown by the x-rays was in fact cryptococcus, there was no showing that indicated that the physician was ever aware of that severe risk. The court held that a jail nurse was not deliberately indifferent to the detainee's serious medical needs in violation of the due process clause, where she responded to all requests for medical service and conveyed the requests and relevant information to a physician, and did not have substantial knowledge of a serious medical risk when she observed that the detainee was not moving about, was urinating on his mat, and was cursing at the staff. (Coweta County Jail, Georgia)

- 7. CIVIL RIGHTS: ADA- Americans with Disabilities Act
- 9. CONDITIONS OF CONFINEMENT: Hearing Impaired
- 29. MEDICAL CARE: Hearing Impaired, ADA- Americans with Disabilities Act
- 39. SAFETY AND SECURITY: Fire Safety

Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Correctional Facility, New York)

- 1. ACCESS TO COURT: Privileged Correspondence
- 19. FREE SPEECH, EXPRESSION AND ASSOCIATION: Mail
- 28. MAIL: Legal Mail

Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). A state prisoner and his attorney-friend brought a civil rights action against prison officials alleging violation of their First and Fourteenth Amendment rights. The plaintiffs moved for a preliminary injunction, which the district court granted. The court held that the plaintiffs demonstrated irreparable injury to their rights from the officials' blanket prohibition of all legal mail perceived by the officials to not directly pertain to the prisoner's cases. The court found the ban to be more restrictive than was necessary. The officials suspected that the prisoner was providing paralegal services for cases not related to his own. (Nevada)

- 36. RELEASE: Parole- Conditions

Farrell v. Burke, 449 F.3d 470 (2nd Cir. 2006). A former state parolee brought a § 1983 action against parole officers, alleging that they violated his constitutional rights under the due process clause of the Fourteenth Amendment by imposing and enforcing a special condition of parole that prohibited his possession of "pornographic material." The district court granted the defendants' motion for summary judgment, and the parolee appealed. The appeals court affirmed, and held that: (1) parole officers who enforced the special condition by arresting the parolee were "personally involved" in any violation of his constitutional rights, even though neither of them had imposed the special condition; (2) the book found in the parolee's

apartment, which contained sexually explicit pictures and lurid descriptions of sex between men and boys, fell within any reasonable definition of “pornography,” and so the parolee had adequate notice that it was prohibited under the first prong of the as-applied vagueness challenge; (3) the special condition provided adequate standards for the parole officers to determine whether the book in question was prohibited, under the second prong of the as-applied vagueness challenge; (4) this case presented no threat of chilling constitutionally-protected conduct that might have supported a facial challenge to the vagueness of the special condition; and (5) under the circumstances, the court could not say that the special condition's overbreadth was both real and substantial in relation to its plainly legitimate sweep. (New York)

16. FALSE IMPRISONMENT/ARREST: False Imprisonment

Figg v. Russell, 433 F.3d 593 (8th Cir. 2006). A prisoner brought an action against prison officials and parole board members, alleging that she was illegally incarcerated in violation of § 1983, and asserting state law claims for false imprisonment and invasion of privacy. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the parole board members, parole agent, warden and correctional officers were entitled to absolute immunity. The court noted that parole board members had the authority under state law to make such decisions based on the prisoner's signed parole agreement, and the warden's and correctional officers' incarceration of the prisoner was based on a facially valid court order. (South Dakota State Penitentiary)

- 1. ACCESS TO COURT: PLRA- Prison Litigation Reform Act, Exhaustion
- 7. CIVIL RIGHTS: ADA- Americans with Disabilities Act
- 9. CONDITIONS OF CONFINEMENT: Hearing Impaired
- 29. MEDICAL CARE: Hearing Impaired, ADA- Americans with Disabilities Act
- 39. SAFETY AND SECURITY: Fire Safety

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

29. MEDICAL CARE: Failure to Provide Care, Deliberate Indifference

Fleming v. LeFevere, 423 F.Supp.2d 1064 (C.D.Cal. 2006). An inmate who was denied treatment for Hepatitis C sued a prison's staff psychiatrist who reported that the prisoner was a fairly poor candidate for treatment of Hepatitis C with Interferon, alleging state and federal constitutional violations. The psychiatrist filed a motion for summary judgment which the court granted. The district court held that the inmate failed to establish that the psychiatrist was deliberately indifferent to the inmate's serious medical need in violation of his rights under the Eighth Amendment, because the prisoner's claim was based solely on his disagreement with the psychiatrist's medical evaluation, and he failed to provide any competent evidence to satisfy his burden of showing that the psychiatrist chose a medically unacceptable course of treatment in conscious disregard of any risk to the inmate's health. The court held that the inmate failed to state a claim under the Fourteenth Amendment, and that even assuming the psychiatrist violated the inmate's constitutional rights, the psychiatrist was entitled to qualified immunity. According to the court, the inmate could not state a claim for personal injury damages against the psychiatrist based on the equal protection clause of the California Constitution, and the inmate could not state a claim against the psychiatrist based on a clause of California Constitution providing that state constitutional rights were not dependent on those guaranteed by the United States Constitution. (California Men's Colony)

- 3. ADMINISTRATIVE SEGREGATION: Conditions, Exercise, Recreation
- 9. CONDITIONS OF CONFINEMENT: Out of Cell Time, Segregation, Exercise
- 10. CRUEL AND UNUSUAL PUNISHMENT: Conditions, Exercise
- 12: EXERCISE AND RECREATION: Outdoor Recreation, 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 there was an arguable basis that the prisoner's three year period of administrative segregation, during which the prisoner was confined to his cell for all but five hours each week and was denied access to any outdoor recreation, violated the prisoner's rights. The court held that the district court abused its discretion by concluding there was no arguable basis that the denial of outdoor exercise was unconstitutionally cruel and unusual punishment. (Limon Correctional Facility, Colorado)

- 7. CIVIL RIGHTS: Sex Offender, Parole, Self Incrimination
- 22. HABEAS CORPUS: Parole
- 34. PROGRAMS- PRISONER: Sex Offender
- 36. RELEASE: Parole- Due Process

Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). A state inmate filed a petition for a writ of habeas corpus challenging a state parole board's denial of parole. The district court held that requiring the inmate to admit to the sexual crimes for which he was convicted, as a condition for completing a rehabilitation program, did not violate his Fifth Amendment right against self-incrimination, nor the inmate's substantive due process rights or the inmate's First Amendment right not to be compelled to speak. The court found that the requirement did not constitute sufficient compulsion to implicate the inmate's Fifth Amendment right against self-incrimination, even though the inmate's chance at parole was diminished if he did not successfully complete the program, where the inmate's failure to accept responsibility for his sexual behavior did not automatically preclude him from parole. (State Correctional Institution, Houtzdale, Pennsylvania)

- 16. FALSE IMPRISONMENT/ARREST: False Imprisonment
- 32. PRETRIAL DETENTION: False Imprisonment

Garcia Rodriguez v. Andreu Garcia, 403 F.Supp.2d 174 (D.Puerto Rico 2005). An arrestee brought a civil rights claim alleging that he was illegally detained following his arrest on a warrant for failure to pay alimony. The district court held that the arrestee stated a claim for false imprisonment in violation of his Fourth Amendment rights. The arrestee alleged that the officers who arrested him had no authority under the arrest warrant to immediately incarcerate him, but should have caused his appearance before a judge. The arrestee was held in prison for five days until bail was paid by his relatives. (Bayamon Penitentiary, Puerto Rico)

- 14. FAILURE TO PROTECT: Suicide
- 32. PRETRIAL DETENTION: Suicide

Gaston v. Ploeger, 399 F.Supp.2d 1211 (D.Kan. 2005). The estate of a county jail detainee who committed suicide in his cell sued a sheriff, county, and jail officials, seeking compensation. The defendants moved for summary judgment, which the district court granted in part and denied in part. The court held that the county commissioners did not show deliberate indifference to the detainee, where there was a failure to connect them with any of the events leading up to the suicide. The court found that summary judgment was precluded by fact issues as to whether the sheriff was liable in his individual capacity for failing to train staff regarding suicide risk. The court also found that summary judgment was precluded by fact issues regarding the liability of officers who had contact with the detainee. The detainee allegedly exhibited strong signs of suicidal tendencies of which the officials were aware, or should have been aware, and it was unclear whether the officials took steps to address the risk. The court denied qualified immunity for the officials because the law was clearly established at the time of the suicide that officials were required to act if they had knowledge of a substantial risk to jail detainees. (Brown County Jail, Kansas)

5. ATTORNEY FEES: Consent Decree, PLRA- Prison Litigation Reform Act
27. LIABILITY: Class Action, PLRA- Prison Litigation Reform Act

Ginest v. Board of County Com'rs of Carbon County, 423 F.Supp.2d 1237 (W.D.Wyo. 2006). County jail inmates filed a motion for an award of attorney fees and expenses after obtaining a consent decree in a § 1983 class action against a county and sheriff in his official capacity, for deliberate indifference to their medical needs, and a contempt order against the defendants. The district court held that: (1) the class counsel for the inmates was entitled to attorney fees for time and effort spent in monitoring compliance by the county and its sheriff with the remedial plan; (2) the Prison Litigation Reform Act (PLRA) did not preclude an award of attorney fees to the class counsel; (3) the counsel would be awarded a 25% fee multiplier or enhancement; and (4) the counsel was entitled to the award of expenses for his travel to Wyoming to review medical records and perform other activities on behalf of the inmates. (Carbon County, Wyoming)

11. DISCIPLINE: Witness, Due Process
22. HABEAS CORPUS: Discipline

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)

37. RELIGION: Beards, RLUIPA- Religious Land Use and Institutionalized Persons Act
38. RULES AND REGULATIONS- PRISONER: Beards

Gooden v. Crain, 405 F.Supp.2d 714 (E.D.Tex. 2005). A state prisoner brought a pro se action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he should be permitted to grow a beard in accordance with his Muslim religious beliefs. The district court dismissed the case, finding that the policy that prohibited the inmate from growing a beard did not violate RLUIPA and the policy did not violate the inmate's equal protection rights. The court noted that although the prisoner was prohibited from growing a beard, he was permitted to practice the fundamental aspects of his religious beliefs. According to the court, the policy was the least restrictive means to further the government interest in security, given the need for accurate pictures of inmates. The court found no equal protection violation even though inmates with a skin condition were allowed to have quarter inch beards, noting that the policy was applied equally to all religious groups. (Coffield Unit, Texas Board of Criminal Justice)

26. JUVENILES: Programs, PLRA- Prison Litigation Reform Act
27. LIABILITY: PLRA- Prison Litigation Reform Act, Special Master
34. PROGRAMS- PRISONER: Educational, Juveniles

Handberry v. Thompson, 446 F.3d 335 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983 and the New York education code, alleging failure to provide adequate educational services. After the entry of a declaratory judgment in favor of the inmates, the district court entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court held that the injunction was a necessary and narrowly drawn means of effectuating prospective relief, as required by Prison Litigation Reform Act (PLRA), even though the court described the plaintiff class as consisting of inmates housed in one specific facility, where that was the only facility that provided educational services, and inmates at city's other jails had to transfer there to receive such services. According to the court, the special monitor appointed by the district court to oversee implementation of the order was not a "special master," and thus the requirement that the city and state pay for the special monitor did not violate the provision of Prison Litigation Reform Act (PLRA) requiring expenses for special masters to be borne by the judiciary. (New York City

Department of Education, New York City Department of Corrections, Rikers Island)

7. CIVIL RIGHTS: Voting

19. FREE SPEECH, EXPRESSION AND ASSOCIATION: Voting

Hayden v. Pataki, 449 F.3d 305 (2nd Cir. 2006). Black and Latino inmates and parolees brought an action against the New York Governor, Chairperson of the Board of Elections, and Commissioner of Corrections to challenge, as a violation of the Voting Rights Act (VRA), a statute disenfranchising incarcerated and paroled felons. The district court dismissed the claim. The inmates and parolees appealed and en banc review was granted. The appeals court affirmed and remanded, finding that the VRA prohibition against voting qualifications or prerequisites that resulted in a denial or abridgement of the right to vote on account of race or color did not apply to vote denial and dilution claims. (Shawangunk Correctional Facility, New York)

31. PERSONNEL: Termination, Due Process, Retaliation

Henderson v. New York, 423 F.Supp.2d 129 (S.D.N.Y. 2006). A terminated state corrections officer sued a lieutenant and commissioner, asserting race discrimination and other claims. The lieutenant and commissioner moved for summary judgment and the motions were granted. The district court held that: (1) the lieutenant's alleged pre-termination actions, if proven, were not adverse employment actions; (2) the officer's termination was not causally related to his deposition testimony, and thus did not constitute retaliation; (3) the commissioner did not retaliate against the officer; (4) the officer received procedural due process prior to his termination; (5) the officer's termination did not constitute a substantive due process violation; and (6) the lieutenant's alleged actions, if proven, did not violate the officer's substantive due process rights. (Taconic Correctional Facility, Beacon Correctional Facility, New York)

29. MEDICAL CARE: Deliberate Indifference

Johnson v. Doughty, 433 F.3d 1001 (7th Cir. 2006). A former inmate brought a § 1983 action against prison officials and doctors alleging deliberate indifference to his medical needs. The district court granted summary judgment to some officials, and entered final judgment after a bench trial for the remaining defendants. The inmate appealed and the appeals court affirmed. The court noted that the necessity of surgery for the inmate's hernia was not obvious to a non-medical grievance counselor and warden, and the reviewing administrators determined that the inmate's situation had been addressed appropriately. The examining doctor formed the professional opinion that surgery was not required and did not subsequently observe any worsening of the condition that would necessitate surgery. (Graham Correctional Center, Illinois)

3. ADMINISTRATIVE SEGREGATION: Mail

28. MAIL: Postage

Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). An inmate brought a civil rights action against prison officials, challenging a regulation governing possession of stamps. The district court entered judgment in favor of the officials and inmate appealed. The appeals court held that the inmate did not have a constitutional right to unlimited free postage for non-legal mail, and the regulation was reasonably related to legitimate penological interests, and thus did not violate the inmate's First Amendment right to send outgoing non-legal mail. The prison regulation prevented certain inmates in keeplock from receiving stamps through the mail and permitted them to receive only one free stamp per month for personal use. The court noted that stamps could be used by inmates as a form of currency, and the regulation furthered the legitimate goals of reducing thefts, disputes, and unregulated prisoner transactions. (New York State Department of Correctional Services)

29. MEDICAL CARE: Handicap, Deliberate Indifference

Johnson v. Snyder, 444 F.3d 579 (7th Cir. 2006). A state prisoner, who was an amputee, brought a civil rights action against various prison officials, alleging violation of the Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed. The court held that the director of the state Department of Corrections was not liable absent evidence that the director was actually aware of the prisoner's situation or his complaints. The court concluded that the health care administrator was not deliberately indifferent to the medical needs of the prisoner where the administrator responded in a timely manner to the prisoner's grievance, noted that the prisoner did not need a crutch because of his prosthesis, and recommended that a concrete bench be placed in the shower. The

court also found that the disability coordinator was not deliberately indifferent because the coordinator investigated the prisoner's complaint, acknowledged a problem with the shower and then understood that a stronger chair would be provided, and there was no evidence that the coordinator was aware that a stronger chair was not provided or that he had an affirmative duty to investigate further. The court held that the warden was not deliberately indifferent where the warden was aware of the prisoner's request, he concurred with other officials' recommendation for a different chair, and evidence showed that he believed that his subordinates were attending to the issue. According to the court, the superintendent was not deliberately indifferent, where the superintendent contacted a subordinate prison official who supervised the shower personnel and discussed the problem, he suggested reinforcing the chair, and since he did not hear further about the problem he assumed it had been resolved. (Menard Correctional Center, Illinois)

- 14. FAILURE TO PROTECT: Officer on Prisoner Assault
- 32. PRETRIAL DETENTION: Use of Force
- 48. USE OF FORCE: Excessive Force, Restraining Chair

Johnson v. Wright, 423 F.Supp.2d 1242 (M.D.Ala. 2005). An arrestee sued an arresting officer, a volunteer riding with the officer, and county jail officers, claiming violation of his Fourth Amendment protections against false arrest and excessive force. The officer, volunteer and jail officers moved for summary judgment. The district court held that the jail officers were not entitled to qualified immunity due to material issues of fact, as to whether the jail officers beat the arrestee without provocation while he was in his cell. According to the arrestee, officers dragged him out of his cell and put him in some type of harness chair, and he was in handcuffs during the entire time he was being beaten at the jail and he was still in handcuffs when he was strapped into the harness chair. The arrestee alleged that officers continued to beat him after he was strapped into the harness chair. (Chilton County Jail, Alabama)

- 24. IMMUNITY: Qualified Immunity
- 37. RELIGION: Opportunity to Practice, RLUIPA- Religious Land Use and Institutionalized Persons Act

Kaufman v. McCaughtry, 422 F.Supp.2d 1016 (W.D.Wis. 2006). A state prison inmate brought a § 1983 action against prison officials, challenging their refusal to permit him to organize an atheist study group. Following remand from the court of appeals, the officials moved for summary judgment. The district court held that it was not clearly established in 2002 that atheism was a "religion," and the officials were qualifiedly immune from suit. The court noted that the Free Exercise clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA) limit the government's ability to burden a prisoners' exercise of sincerely-held religious beliefs, even when governmental burdens are imposed neutrally upon believer and non-believer alike. The court noted that the courts had recognized that secular humanism and other non-theistic belief systems were protected by the Free Exercise Clause, but the inmate did not tell officials he was an adherent of any such belief system, and did not indicate that his proposed group was connected to "religious" principles. (Waupun Correctional Institution, Wisconsin)

- 29. MEDICAL CARE: Deliberate Indifference, Failure to Provide Care

MacLeod v. Kern, 424 F.Supp.2d 260 (D.Mass. 2006). A prisoner brought an action against correctional and health care defendants, alleging that they violated his civil rights by displaying deliberate indifference to his medical needs relating to his Hepatitis C, a stomach mass and a testicular cyst. The defendants moved for summary judgment, and the district court granted the motion. The court held that the course of treatment provided for the prisoner's serious medical needs, even if inadequate, was not so inadequate as to shock the conscience, and thereby constitute deliberate indifference in violation of the Eighth Amendment. According to the court, although the defendants denied medication for the prisoner's Hepatitis C, denial of the medication was due to the reason that the prisoner's treatment would have been adversely affected by the prisoner's prior drug use. (University of Massachusetts Correctional Health, Old Colony Correctional Center in Bridgewater, Massachusetts)

- 5. ATTORNEY FEES: Prevailing Party
- 25. INTAKE AND ADMISSIONS: Searches
- 32. PRETRIAL DETENTION: Searches
- 41. SEARCHES: Strip Search

Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) Arrestees brought suit, individually and on behalf of a class of others similarly situated, against a county sheriff's department, county sheriff, county undersheriff, former county undersheriff, a jail administrator and a lieutenant, challenging the constitutionality of the search policy of the county jail. The district court held that the policy, pursuant to which arrestees being admitted to a county jail were effectively subjected to strip searches, violated the Fourth Amendment and that the arrestees were entitled to permanent injunctive relief. The court found that the arrestees were the "prevailing parties" entitled to an award of attorney fees. According to the court, the Fourth Amendment precludes officials from performing strip searches and/or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest. The court held that the indiscriminate strip-searching of misdemeanor arrestees is unconstitutional. The policy required arrestees to remove their clothing in front of a corrections officer (CO) and take a shower, regardless of the nature of their crime and without any determination that there was a reasonable suspicion that they possessed contraband. The court found that the policy violated the Fourth Amendment, despite the claim that the written policy did not involve either a command for the arrestee to undress completely or a command for the CO to inspect the naked arrestee. The court noted that the procedure that was followed in fact by the COs required all admittees to remove their clothes, submit to a visual examination by the CO, and shower. The court held that the arrestees were entitled to a permanent injunction prohibiting county jail officials from conducting a strip search, as set forth in the jail's "change out" procedure. (Montgomery County Jail, New York)

- 1. ACCESS TO COURT: Law Library

Marshall v. Knight, 445 F.3d 965 (7th Cir. 2006). A pro se state prisoner brought a § 1983 action against a prison superintendent and other unnamed prison employees, alleging that they unconstitutionally deprived him of access to the courts by impeding his access to the prison law library. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's allegations stated a § 1983 claim for unconstitutional denial of the prisoner's right of access to the courts. The prisoner alleged that a prison superintendent and other unnamed prison employees enforced policies that diminished his access to the prison law library to the point of being non-existent, and that his lack of library access adversely affected his attempt to challenge the length of his incarceration. The appeals court found that these allegations were sufficient, when liberally construed, to state a § 1983 claim for unconstitutional denial of the prisoner's right of access to the courts. (Miami Correctional Facility, Indiana)

- 29. MEDICAL CARE: Deliberate Indifference, Failure to Provide Care, Transportation

Martinez v. Garden, 430 F.3d 1302 (10th Cir. 2005). A state prisoner brought a civil rights action against prison officials, alleging they were deliberately indifferent to his serious medical needs. The district court dismissed the action and the prisoner appeals. The appeals court reversed and remanded. The court held that the prisoner's allegations that the officials knew of his serious medical condition, but failed to inform him of medical appointments or to arrange transportation, were sufficient to state a claim for deliberate indifference. (Utah State Prison)

- 21. GRIEVANCE PROCEDURES, PRISONER: Retaliation
- 47. TRANSFERS: Retaliation
- 50: WORK- PRISONER: Transfer, Removal from Job

Morris v. Powell, 449 F.3d 682 (5th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment right to use the prison grievance system. Following denial of the defendants' first motion for summary judgment, the appeals court remanded for consideration of whether an inmate's retaliation claim must allege more than a *de minimis* adverse act. On remand, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) when addressing an issue of apparent first impression for the court, prisoners bringing § 1983 retaliation claims

against prison officials must allege more than an inconsequential or *de minimis* retaliatory act to establish a constitutional violation; (2) the officials' alleged actions in moving the inmate to a less desirable job within the prison did not rise to the level of an actionable retaliation; (3) the inmate's claim that he was transferred to an inferior and more dangerous prison satisfied the *de minimis* threshold; and (4) the defendants were entitled to qualified immunity on the inmate's job transfer claim. The court noted that although the inmate's official job classification was switched from the commissary to the kitchen for about six weeks, he was actually made to work in the kitchen for only a week at most, and he spent just one day in the "pot room," which was evidently an unpleasant work station, after which he was moved to the butcher shop, about which he raised no complaints. (Telford Unit, Texas Department of Criminal Justice)

7. CIVIL RIGHTS: Voting

19. FREE SPEECH, EXPRESSION AND ASSOCIATION: Voting

Muntaqim v. Coombe, 449 F.3d 371 (2nd Cir. 2006). A felon filed an action alleging that New York's felon disenfranchisement statute violated the Voting Rights Act. The district court granted the prison officials' motion for summary judgment, and the felon appealed. The appeals court held that felon was not resident of New York and thus did not have standing to challenge New York's felon disenfranchisement statute as a violation of the Voting Rights Act. The court noted that even though the felon had been incarcerated in New York prisons for the past 30 years, the inmate was a California resident before he was incarcerated in New York, he was never resident of New York, and he disavowed any intention to become a resident of New York in future. (Shawangunk Correctional Facility, New York)

16. FALSE IMPRISONMENT/ARREST: False Imprisonment

27. LIABILITY: Insurance

North River Ins. Co. v. Broward County Sheriff's Office, 428 F.Supp.2d 1284 (S.D.Fla. 2006). An insurer sued a county sheriff's office and a number of its officers, seeking a determination of its coverage obligations regarding lawsuits involving former inmates who had been incarcerated over 20 years earlier, but who were recently exonerated. The insurer moved for summary judgment. The district court held that "bodily injury" and "personal injury" covered by the policy did not cover allegations of malicious prosecution and false imprisonment that occurred 20 years earlier. One of the complaints was filed by the estate of an inmate who died in prison in 2000 and was posthumously exonerated later that year. The second complaint was filed by a person who was arrested in 1979 and convicted in 1980 and spent 22 years in prison before he was exonerated and released from prison in June 2001. (Broward County Sheriff's Office, Florida)

1. ACCESS TO COURT: Law Library, Access to Counsel, Searches, Retaliation

2. ADMINISTRATION: Commissary

3. ADMINISTRATIVE SEGREGATION: Conditions, Restrictions

10. CRUEL AND UNUSUAL PUNISHMENT: Commissary, Conditions

19. FREE SPEECH, EXPRESSION AND ASSOCIATION: Mail, Publications

39. SAFETY AND SECURITY: Searches- Cell, Publications

41. SEARCHES: Cell Search

42. SERVICES- PRISONER: Commissary

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court held that the officials did not deny the inmate's request to call an attorney, and thus did not violate the inmate's First Amendment right to access courts, where the officials made several attempts to contact the inmate's attorney but were told that she was too busy or did not want to speak to the inmate, the attorney had filed a motion to withdraw as the inmate's counsel, and the public defender's office informed the officials that the inmate was not a client. According to the court, the officials gave the inmate adequate law library time and legal assistance, and thus did not violate the inmate's First Amendment right to access courts, even though the inmate did not have access to the prison's legal resources 24 hours per day. The court noted that during a two-and-a-half month period, the inmate requested and received law library services 23 times, and had access to the law library 77 times.

The court found that the officials' decision to "shake down" the inmate's cell was not in retaliation for his having filed a civil rights action, and thus did not violate the inmate's First Amendment right to access courts, where shakedown were routine, and the inmate was thought to have prohibited materials in his cell.

The court also held that the officials did not violate the inmate's First Amendment free speech rights by refusing the word puzzles sent by the inmate's family through regular mail and by disallowing catalogs for magazines or books, where there was no allegation that the inmate had been denied actual magazines or books, and word puzzles were not permitted under prison regulations.

According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment.

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)

- 1. ACCESS TO COURT: Retaliation for Legal Action
- 34. PROGRAMS- PRISONER: Psychological, Right to Treatment
- 47. TRANSFERS: Purpose, Retaliation

Price v. Wall, 428 F.Supp.2d 52 (D.R.I. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that he was intentionally transferred him to the facility where he was confined in an effort to frustrate his rehabilitation, in retaliation for his filing of a motion to compel compliance with a state court order, in violation the First Amendment. The defendants moved to dismiss. The district court held that the inmate stated a First Amendment retaliation claim where he alleged that corrections officials intentionally transferred him to the facility in retaliation for his court action. According to the court, the question was not whether the defendants had a right to transfer the inmate, but whether such action was accomplished for an unlawful purpose. The inmate had been required, as a condition of his sentence, to complete certain rehabilitative programs, including psychological and psychiatric treatment while incarcerated. After not receiving any of the court-mandated treatment, the inmate filed a motion in the state courts seeking to compel the Department of Corrections to comply with the state court order. After several skirmishes, the Department of Corrections agreed to provide the inmate with the court-mandated treatment. The parties further agreed that if the inmate successfully completed the first round of treatment, the Department of Corrections would upgrade his classification status, permitting him to participate in further rehabilitative treatment as mandated by the state court. The inmate successfully completed his first round of treatment and appeared before a classification board for review of his classification status. Based on his successful completion of the initial round of treatment and pursuant to the agreement between the inmate and the Department, the board recommended that the inmate's classification be upgraded. But the defendants refused to permit an upgrade and instead launched no less than three separate, unrelated investigations into various matters, delaying the inmate's classification status upgrade and prohibiting him from participating in further rehabilitation. (Rhode Island Department of Corrections)

- 1. ACCESS TO COURT: PLRA, Prison Litigation Reform Act, Exhaustion
- 21. GRIEVANCE PROCEDURES, PRISONER: PLRA, Prison Litigation Reform Act, Exhaustion
- 29. MEDICAL CARE: Deliberate Indifference, Delay in Care
- 32. PRETRIAL DETENTION: Medical Care

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that "rules" on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made.

The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court,

the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment received from the physician's assistant to allow those concerns to be dealt with administratively.

The court found that material issues of fact existed as to whether the superintendent and assistant superintendent denied outside care to the detainee on prohibited bases, such as the detainee's ability or willingness to pay for such medical services, precluding summary judgment for the officials on the detainee's claims alleging deliberate indifference to his serious medical needs. But the court concluded that a delay in having the detainee examined by an orthopedic surgeon did not cause him any additional pain or permanent injury, given that the specialists who eventually saw the detainee did not believe that surgery was an appropriate treatment for his shoulder pain and the measures recommended did not appreciably reduce the detainee's pain and discomfort, such that implementing them earlier would not have measurably improved his condition. The court found that the detainee's injury did not amount to a "serious medical need" for alleged deliberate indifference to his serious medical needs. (Merrimack County House of Corrections, New Hampshire)

- 1. ACCESS TO COURT: PLRA- Prison Litigation Reform Act, Exhaustion
- 37. RELIGION: Opportunity to Practice, RFRA- Religious Freedom Restoration Act, RLUIPA Religious Land Use and Institutionalized Persons Act

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

- 31. PERSONNEL: Religion, Free Speech, Discrimination

Shrum v. City of Coweta, Okla., 449 F.3d 1132 (10th Cir. 2006). A law enforcement officer/clergyman who resigned from a police department after the police chief allegedly rearranged his work schedule so it would conflict with his duties as a minister filed a § 1983 action against the city, police chief and city manager alleging violations of his constitutional rights to freedom of association, free exercise of religion, and substantive due process. The chief appealed a partial denial by the district court of his motion for summary judgment on the basis of qualified immunity. The appeals court affirmed in part, reversed in part, and remanded. The court held that the police chief was not entitled to qualified immunity on the officer's claim of interference with free exercise of his religion, finding that the mere refusal of the chief and police department to accommodate the officer's religious scheduling needs, without more, would not establish a constitutional violation. The officer alleged he was moved to the day shift precisely because of the chief's knowledge of his religious commitment, claiming that the transfer decision was not neutral but rather was motivated by the officer's religious commitments. The officer apparently successfully juggled his two responsibilities for eight years, but his relationship with the management of the police department soured and his schedule was changed. Forced to choose between his police and his ministerial responsibilities, he resigned from the police department and filed suit. (City of Coweta, Oklahoma)

- 14. FAILURE TO PROTECT: Prisoner on Prisoner Assault
- 39. SAFETY AND SECURITY: Segregation, Protection

Smith v. Cummings, 445 F.3d 1254 (10th Cir. 2006). A prisoner brought civil rights claims and state law claims against a former prison officer and prison officials. The district court entered judgment against the prison officer and summary

judgment in favor of the other defendants. The appeals court affirmed in part and remanded in part. The court held that prison officials did not violate the Eighth Amendment by failing to clear an area through which segregated inmates passed, of all inmates from the regular population, when escorting segregated inmates to and from the protective housing unit, absent a showing of conditions posing a serious risk of harm or evidence of deliberate indifference. The court noted that no segregated inmate was ever assaulted on these occasions, other precautions were taken by the officials, and the officials acted promptly in response to the inmate's particular safety concerns once alerted. (Lansing Correctional Facility, Kansas)

- 19. FREE SPEECH, EXPRESSION AND ASSOCIATION: Publications, Free Speech
- 38. RULES AND REGULATIONS- PRISONER: Publications

Smith v. Miller, 423 F.Supp.2d 859 (N.D.Ind. 2006). A state inmate filed a § 1983 action challenging prison officials' decision to confiscate his anarchist materials. The officials moved for summary judgment. The district court held that fact issues remained as to whether mere possession of anarchist literature presented a clear and present danger to prison security. The court opened its opinion by stating: "The issue of anarchism has raised its ugly face again, this time in a prison context...The question here focuses on whether or not prison officials at the Indiana State Prison are authorized to confiscate anarchist materials from inmates incarcerated there...While the question presented here is a very close one, and it may be one on which the prison authorities will later prevail....there needs to be a more extensive factual record." The court noted that if a trial were to be held, the court would attempt to appoint counsel for the plaintiff and make every effort to keep the case as narrowly confined as possible. According to the court, "Although it is a close case, there is enough here, if only barely enough, to keep the courthouse doors open for this claim which necessarily involves overruling and denying the defendants' motion." (Indiana State Prison)

- 9. CONDITIONS OF CONFINEMENT: Temperature
- 32. PRETRIAL DETENTION: Conditions

Spencer v. Bouchard, 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)

- 14. FAILURE TO PROTECT: Prisoner on Prisoner Assault
- 27. LIABILITY: Private Operator, Sovereign Immunity
- 32. PRETRIAL DETENTION: Protection
- 46. TRAINING: Failure to Train

Stephens v. Correctional Services Corp., 428 F.Supp.2d 580 (E.D.Tex. 2006). A pretrial detainee brought an action against a private jail corporation, alleging civil rights violations and common law negligence stemming from an attack while he was incarcerated. The corporation moved for dismissal. The district court held that 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)

- 1. ACCESS TO COURT: Privileged Correspondence
- 28. MAIL: Legal Mail

Strong v. Woodford, 428 F.Supp.2d 1082 (C.D.Cal. 2006). A prisoner filed a § 1983 action, alleging prison officials mishandled or destroyed his outgoing legal mail. The defendants filed a motion to dismiss. The district court held that the prisoner failed to state a First Amendment violation with respect to access to the courts and that the prisoner's allegations that prison officials negligently destroyed or mishandled his legal mail did not support an actionable claim under § 1983. The court held that the prisoner's allegations of supervisor liability did not state a claim under § 1983 and that the officials were immune from liability for money damages or other retroactive relief. According to the court, a delay in filing a legal document without any attendant adverse consequences does not constitute actual harm, as required for an inmate to assert claims based on a denial of his First Amendment rights in legal correspondence. (California)

- 25. INTAKE AND ADMISSIONS: Searches
- 32. PRETRIAL DETENTION: Searches
- 41. SEARCHES: Strip Search

Tardiff v. Knox County, 425 F.Supp.2d 190 (D.Me.2006). A class action suit was brought against a county, its sheriff, and unidentified jail correctional personnel under § 1983, claiming that the Fourth Amendment rights of detainees alleged to have committed non-violent, non-weapons, and non-drug felonies, and detainees alleged to have committed misdemeanors, were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. Summary judgment was granted in part and denied in part to the plaintiffs, and the defendants filed a motion for reconsideration. The district court held that: (1) evidence, including booking logs at the county jail, demonstrated that corrections officers routinely strip searched misdemeanor detainees without reasonable suspicion; (2) a jail administrator's letter was highly probative of what municipal policymakers knew about ongoing strip search practices at the jail; (3) intake and release log evidence provided proof that, for at least some corrections officers, strip searching was customary; and (4) the actions taken by the county in response to the unconstitutional practice of strip searching misdemeanor detainees amounted to acquiescence in it. According to the court, a county jail inspection report provided information about the circumstances surrounding search practices at the jail, as well as the knowledge of the county policymakers before the commencement of the class period, and, thus, was relevant in the class action suit. (Knox County Jail, Maine)

- 14. FAILURE TO PROTECT: Prisoner Suicide
- 32. PRETRIAL DETENTION: 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)

7. CIVIL RIGHTS: Civil Commitment, Smoking
10. CRUEL AND UNUSUAL PUNISHMENT: 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)

29. MEDICAL CARE: Deliberate Indifference, Failure to Provide Care

Thomas v. Bruce, 428 F.Supp.2d 1161(D.Kan. 2006). A state prisoner brought a civil rights action under § 1983 against prison officials, asserting an Eighth Amendment claim for deliberate indifference to his serious medical needs. The district court granted the officials' motion for summary judgment, but the court of appeals reversed and remanded. On remand, the district court held that the officials did not violate the prisoner's Eighth Amendment right to be free from cruel and unusual punishment by allegedly failing to treat his Hepatitis C, where the officials recognized the prisoner's condition and provided ongoing monitoring. The court noted that, when the prisoner's high enzyme levels warranted further testing and a liver biopsy, officials took steps to ensure treatment through the established administrative process. (Hutchinson Corr'l Facil. KS)

24. IMMUNITY: Eleventh Amendment

Thomas v. St. Louis Bd. of Police Com'rs, 447 F.3d 1082 (8th Cir. 2006). An arrestee who was involuntarily committed to a mental hospital brought an action against a city board of police commissioners and police officers, alleging false arrest, unlawful detention and confinement, malicious abuse of process, and intentional infliction of emotional distress. The district court dismissed the case but the appeals court reversed and remanded, finding that the board was not entitled to Eleventh Amendment sovereign immunity. The court found that binding precedent directed that the board is not an arm of the state and thus was not entitled to Eleventh Amendment immunity. (St. Louis Board of Police Commissioners)

25. INTAKE AND ADMISSIONS: Medical Screening, Searches
29. MEDICAL CARE: Intake Screening
32. PRETRIAL DETENTION: Searches, Intake Screening, Medical Care

Thompson v. County of Cook, 428 F.Supp.2d 807 (N.D.Ill. 2006). A detainee held for civil contempt brought an action against a county and a sheriff, alleging civil rights violations due to invasive search procedures. Following a jury verdict for the defendants, the detainee moved for a new trial. The district court held that a jury's verdict as to an unreasonable body cavity search was against the manifest weight of evidence. The court noted that, notwithstanding the detainee's purported intermingling with others who were incarcerated, he was not charged with any crime, and there was no evidence that deputies noticed anything suspicious about detainee which would have otherwise justified a search. The detainee was subjected to an invasive urethral swabbing procedure without his consent. The detainee had been held in civil contempt and ordered held in custody after he refused to sign certain documents related to his pending divorce proceedings. Upon arrival at the jail, the detainee was processed along with approximately 250 other new inmates. After spending some time in a holding pen, the detainee and others were photographed and given identification cards. An employee from Cermak Health Services, the agency responsible for administering medical treatment to detainees at the jail, then asked Thompson a number of medical screening questions. During the interview, the detainee responded to the questions on a standard form concerning his medical history and signed the following "consent for treatment" portion of the form: *I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook*

County Jail. I also consent to ongoing medical treatment by Cermak Health Services staff for problems identified during this process. I understand I may be asked to sign forms allowing other medical treatments. I understand that every effort will be made by CHS staff to keep my medical problems confidential. I understand the policy of CHS regarding access to health care at Cook County Jail. The defendants presented evidence at trial that during the interview, an employee informed the detainee of his right to refuse the medical screening, but the detainee denied that anyone informed him of his right to refuse to consent. Following the medical screening interview, his personal property was inventoried and then he and other inmates then underwent a urethral swabbing procedure. He claimed that he felt pain both during and after the procedure. (Cook County Jail, Illinois)

32. PRETRIAL DETENTION: Pre-Sentence Detention

U.S. v. Nedd, 415 F.Supp.2d 1 (D.Me. 2006). A defendant convicted of two federal firearms charges sought presentence release. The district court denied release, based on the defendant's failure to comply with the terms of his pretrial release, and his belligerence toward a pretrial services officer who indicated that he posed a danger to the community. (U.S. District Court, Maine)

9. CONDITIONS OF CONFINEMENT: Lighting

10. CRUEL AND UNUSUAL PUNISHMENT: Lighting

Wills v. Terhune, 404 F.Supp.2d 1226 (E.D.Cal. 2005). A state prison inmate brought a § 1983 action against corrections officials alleging that the constant illumination in the prison's security housing unit constituted cruel and unusual punishment. The inmate moved for a preliminary injunction. The district court denied the motion, finding that the constant illumination was not an unsafe condition of confinement and therefore did not violate the Eighth Amendment, and that the balance of harms was in favor of corrections officials. The inmate contended that the illumination prevented sleep, but the lighting consisted of a single low-watt bulb that the inmate conceded it was not bright enough to read or write by. The court noted that the officials provided evidence that established the security purpose for the illumination. (California State Prison, Corcoran)

17. FEMALE PRISONERS: Searches

32. PRETRIAL DETENTION: Searches

41. SEARCHES: Strip Search, Body Cavity Search

Way v. County of Ventura, 445 F.3d 1157 (9th Cir. 2006). A female arrestee who had undergone a strip search with body cavity inspection upon booking on a misdemeanor charge of being under the influence of a controlled substance, brought § 1983 Fourth Amendment action against a county sheriff and against the deputy who had performed the search. The district court granted summary judgment for the arrestee, and defendants appealed. The appeals court affirmed in part and reversed in part. The court held that a suspicionless strip search conducted solely on basis of the county's blanket policy for controlled-substance arrestees offended the Fourth Amendment, where the intrusiveness of the search was extreme, the county did not show any link between the policy and legitimate security concerns for persons spontaneously arrested and detained temporarily on under-the-influence charges, and the arrestee was detained only until bail was posted and never entered the jail's general population. The court held that the defendants were entitled to qualified immunity because the appellate court in the county's federal circuit had never previously addressed the constitutionality of a body cavity search policy premised on the nature of drug offenses, and had held that the nature of offense alone may sometimes provide reasonable suspicion. (Ventura County Sheriff's Department, California)

36. RELEASE: Parole- Violation, Electronic Monitoring

Yahweh v. U.S. Parole Com'n, 428 F.Supp.2d 1293 (S.D.Fla. 2006). A parolee brought an action against the United States Parole Commission (USPC), seeking declaratory judgment or other relief from his placement on the Home Detention Electronic Monitoring Program upon the USPC's determination that he violated his parole by submitting incomplete and untruthful information to his probation officer. USPC objected to a magistrate judge's report and recommendation that the parolee's motion for a preliminary injunction should be granted. The district court held that the USPC was within its discretion in placing the parolee on the program for violating his parole, and that a preliminary injunction was not warranted. (United States Parole Commission)

Part 2: Case Summaries by Major Topic Section

1. ACCESS TO COURT

- U.S. District Court
PRIVILEGED CORRESPONDENCE
- Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). A state prisoner and his attorney-friend brought a civil rights action against prison officials alleging violation of their First and Fourteenth Amendment rights. The plaintiffs moved for a preliminary injunction, which the district court granted. The court held that the plaintiffs demonstrated irreparable injury to their rights from the officials' blanket prohibition of all legal mail perceived by the officials to not directly pertain to the prisoner's cases. The court found the ban to be more restrictive than was necessary. The officials suspected that the prisoner was providing paralegal services for cases not related to his own. (Nevada)
- U.S. Appeals Court
PLRA- Prisoner Litigation Reform Act
EXHAUSTION
- Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). A detainee brought an action against the United States Marshals Service, various county jails where he was detained, doctors in a federal prison, a private medical center, a private doctor, and others, alleging claims under § 1983 and the Federal Tort Claims Act (FTCA), and alleging negligence under state law. The district court dismissed the action and the detainee appealed. The appeals court affirmed. The court held that filing of an administrative claim with the United States Marshals Service was insufficient to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA), for the purpose of § 1983 claims against county jails and a federal prison doctor. The court noted that administrative claims against the county jails had to be directed to those facilities, and claims alleging wrongdoing by a doctor at a federal prison had to be filed with the federal Bureau of Prisons. The court ruled that FTCA claims against county facilities were barred by the independent contractor exemption of the FTCA. According to the court, allegations did not state deliberate indifference claims against a private medical center or a private doctor with allegations that someone at a private medical center overmedicated him, and that a private doctor failed to properly diagnose the severity of his foot injury. The detainee had been arrested on federal drug and firearm charges and he was held without bail. During his pretrial detention, the United States Marshals Service lodged him in several county jail facilities with which it contracts, and he also spent time in two federal facilities. (Hillsborough County Department of Corrections, NH; Cumberland County Jail, Maine; Merrimack County House of Corrections, NH; FMC Rochester, MN; Strafford County House of Corrections, NH; FCI Raybrook, NY)
- U.S. District Court
ACCESS TO COUNSEL
- Adem v. Bush, 425 F.Supp.2d 7 (D.D.C. 2006). In a habeas case, the petitioner, who was detained at the United States Naval Base in Guantanamo Bay, Cuba, filed a motion to hold federal respondents in contempt of a protective order governing access to counsel for Guantanamo detainees and a motion to expedite his access to counsel. The district court held that the protective order did not require evidence of authority to represent a detainee as a prerequisite to counsel meeting with a detainee, but rather, the protective order provided that counsel who purportedly represented a particular detainee provide evidence of their authority to represent that detainee within 10 days of counsel's second visit with the detainee. (United States at the Naval Base, Guantanamo Bay, Cuba)
- U.S. District Court
PLRA- Prisoner Litigation Reform Act
- Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)
- U.S. Appeals Court
LAW LIBRARY
- Marshall v. Knight, 445 F.3d 965 (7th Cir. 2006). A pro se state prisoner brought a § 1983 action against a prison superintendent and other unnamed prison employees, alleging that they unconstitutionally deprived him of access to the courts by impeding his access to the prison law library. The district court dismissed the action and the prisoner appealed. The appeals court reversed and remanded, finding that the prisoner's allegations stated a § 1983 claim for unconstitutional denial of the prisoner's right of access to the courts. The prisoner alleged that a prison superintendent and other unnamed prison employees enforced policies that diminished his access to the prison law library to the point of being non-existent, and that his lack of library access adversely affected his attempt to challenge the length of his incarceration. The appeals court found that these
-

allegations were sufficient, when liberally construed, to state a § 1983 claim for unconstitutional denial of the prisoner's right of access to the courts. (Miami Correctional Facility, Indiana)

U.S. District Court
LAW LIBRARY
ACCESS TO COUNSEL
SEARCHES
RETALIATION

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court held that the officials did not deny the inmate's request to call an attorney, and thus did not violate the inmate's First Amendment right to access courts, where the officials made several attempts to contact the inmate's attorney but were told that she was too busy or did not want to speak to the inmate, the attorney had filed a motion to withdraw as the inmate's counsel, and the public defender's office informed the officials that the inmate was not a client. According to the court, the officials gave the inmate adequate law library time and legal assistance, and thus did not violate the inmate's First Amendment right to access courts, even though the inmate did not have access to the prison's legal resources 24 hours per day. The court noted that during a two-and-a-half month period, the inmate requested and received law library services 23 times, and had access to the law library 77 times. The court found that the officials' decision to "shake down" the inmate's cell was not in retaliation for his having filed a civil rights action, and thus did not violate the inmate's First Amendment right to access courts, where shakedowns were routine, and the inmate was thought to have prohibited materials in his cell. The court found that the inmate had no constitutionally protected right to purchase food or other items as cheaply as possible through the prison commissary, and therefore prison officials did not violate the inmate's Eighth Amendment rights by allegedly overcharging for commissary products. (Delaware Correctional Center)

U.S. District Court
RETALIATION FOR LEGAL
ACTION

Price v. Wall, 428 F.Supp.2d 52 (D.R.I. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that he was intentionally transferred him to the facility where he was confined in an effort to frustrate his rehabilitation, in retaliation for his filing of a motion to compel compliance with a state court order, in violation the First Amendment. The defendants moved to dismiss. The district court held that the inmate stated a First Amendment retaliation claim where he alleged that corrections officials intentionally transferred him to the facility in retaliation for his court action. According to the court, the question was not whether the defendants had a right to transfer the inmate, but whether such action was accomplished for an unlawful purpose. The inmate had been required, as a condition of his sentence, to complete certain rehabilitative programs, including psychological and psychiatric treatment while incarcerated. After not receiving any of the court-mandated treatment, the inmate filed a motion in the state courts seeking to compel the Department of Corrections to comply with the state court order. After several skirmishes, the Department of Corrections agreed to provide the inmate with the court-mandated treatment. The parties further agreed that if the inmate successfully completed the first round of treatment, the Department of Corrections would upgrade his classification status, permitting him to participate in further rehabilitative treatment as mandated by the state court. The inmate successfully completed his first round of treatment and appeared before a classification board for review of his classification status. Based on his successful completion of the initial round of treatment and pursuant to the agreement between the inmate and the Department, the board recommended that the inmate's classification be upgraded. But the defendants refused to permit an upgrade and instead launched no less than three separate, unrelated investigations into various matters, delaying the inmate's classification status upgrade and prohibiting him from participating in further rehabilitation. (Rhode Island Department of Corrections)

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

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that "rules" on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment received from the physician's assistant to allow those concerns to be dealt with administratively. (Merrimack County House of Corrections, New Hampshire)

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

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

U.S. District Court
 PRIVILEGED CORRES-
 PONDENCE

Strong v. Woodford, 428 F.Supp.2d 1082 (C.D.Cal. 2006). A prisoner filed a § 1983 action, alleging prison officials mishandled or destroyed his outgoing legal mail. The defendants filed a motion to dismiss. The district court held that the prisoner failed to state a First Amendment violation with respect to access to the courts and that the prisoner's allegations that prison officials negligently destroyed or mishandled his legal mail did not support an actionable claim under § 1983. The court held that the prisoner's allegations of supervisor liability did not state a claim under § 1983 and that the officials were immune from liability for money damages or other retroactive relief. According to the court, a delay in filing a legal document without any attendant adverse consequences does not constitute actual harm, as required for an inmate to assert claims based on a denial of his First Amendment rights in legal correspondence. (California)

2. ADMINISTRATION

U.S. District Court
 COMMISSARY

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court found that the inmate had no constitutionally protected right to purchase food or other items as cheaply as possible through the prison commissary, and therefore prison officials did not violate the inmate's Eighth Amendment rights by allegedly overcharging for commissary products. (Delaware Correctional Center)

3. ADMINISTRATIVE SEGREGATION

U.S. Appeals Court
 CONDITIONS
 EXERCISE
 RECREATION

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 there was an arguable basis that the prisoner's three year period of administrative segregation, during which the prisoner was confined to his cell for all but five hours each week and was denied access to any outdoor recreation, violated the prisoner's rights. The court held that the district court abused its discretion by concluding there was no arguable basis that the denial of outdoor exercise was unconstitutionally cruel and unusual punishment. (Limon Correctional Facility, Colorado)

U.S. Appeals Court
 MAIL

Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). An inmate brought a civil rights action against prison officials, challenging a regulation governing possession of stamps. The district court entered judgment in favor of the officials and inmate appealed. The appeals court held that the inmate did not have a constitutional right to unlimited free postage for non-legal mail, and the regulation was reasonably related to legitimate penological interests, and thus did not violate the inmate's First Amendment right to send outgoing non-legal mail. The prison regulation prevented certain inmates in keeplock from receiving stamps through the mail and permitted them to receive only one free stamp per month for personal use. The court noted that stamps could be used by inmates as a form of currency, and the regulation furthered the legitimate goals of reducing thefts, disputes, and unregulated prisoner transactions. (New York State Department of Correctional Services)

U.S. District Court
 CONDITIONS
 RESTRICTIONS

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court held that the officials did not deny the inmate's request to call an attorney, and thus did not violate the inmate's First Amendment right to access courts, where the officials made several attempts to contact the

inmate's attorney but were told that she was too busy or did not want to speak to the inmate, the attorney had filed a motion to withdraw as the inmate's counsel, and the public defender's office informed the officials that the inmate was not a client. According to the court, the officials gave the inmate adequate law library time and legal assistance, and thus did not violate the inmate's First Amendment right to access courts, even though the inmate did not have access to the prison's legal resources 24 hours per day. The court noted that during a two-and-a-half month period, the inmate requested and received law library services 23 times, and had access to the law library 77 times. According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment. (Delaware Correctional Center)

4. ASSESSMENT OF COSTS

No cases.

5. ATTORNEY FEES

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

Ginest v. Board of County Com'rs of Carbon County, 423 F.Supp.2d 1237 (W.D.Wyo. 2006). County jail inmates filed a motion for an award of attorney fees and expenses after obtaining a consent decree in a § 1983 class action against a county and sheriff in his official capacity, for deliberate indifference to their medical needs, and a contempt order against the defendants. The district court held that: (1) the class counsel for the inmates was entitled to attorney fees for time and effort spent in monitoring compliance by the county and its sheriff with the remedial plan; (2) the Prison Litigation Reform Act (PLRA) did not preclude an award of attorney fees to the class counsel; (3) the counsel would be awarded a 25% fee multiplier or enhancement; and (4) the counsel was entitled to the award of expenses for his travel to Wyoming to review medical records and perform other activities on behalf of the inmates. (Carbon County, Wyoming)

U.S. District Court
PREVAILING PARTY

Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) Arrestees brought suit, individually and on behalf of a class of others similarly situated, against a county sheriff's department, county sheriff, county undersheriff, former county undersheriff, a jail administrator and a lieutenant, challenging the constitutionality of the search policy of the county jail. The district court held that the policy, pursuant to which arrestees being admitted to a county jail were effectively subjected to strip searches, violated the Fourth Amendment and that the arrestees were entitled to permanent injunctive relief. The court found that the arrestees were the "prevailing parties" entitled to an award of attorney fees. According to the court, the Fourth Amendment precludes officials from performing strip searches and/or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest. The court held that the indiscriminate strip-searching of misdemeanor arrestees is unconstitutional. The policy required arrestees to remove their clothing in front of a corrections officer (CO) and take a shower, regardless of the nature of their crime and without any determination that there was a reasonable suspicion that they possessed contraband. The court found that the policy violated the Fourth Amendment, despite the claim that the written policy did not involve either a command for the arrestee to undress completely or a command for the CO to inspect the naked arrestee. The court noted that the procedure that was followed in fact by the COs required all admittees to remove their clothes, submit to a visual examination by the CO, and shower. The court held that the arrestees were entitled to a permanent injunction prohibiting county jail officials from conducting a strip search, as set forth in the jail's "change out" procedure. (Montgomery County Jail, New York)

6. BAIL

No cases.

7. CIVIL RIGHTS

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

Arce v. O'Connell, 427 F.Supp.2d 435 (S.D.N.Y. 2006). A purportedly hearing-impaired inmate brought a pro se suit against employees of a corrections department, alleging that they violated his rights under the Americans with Disabilities Act (ADA), as well as the Eighth and Fourteenth Amendments, by failing to provide reasonable accommodations for his hearing impairment and retaliating against him after he filed grievances regarding the lack of such accommodations. The defendants moved for summary judgment and the court dismissed the case. The district court held that the inmate was not a member of the class protected by a consent decree addressing the treatment of deaf or hard-of-hearing inmates and thus, he lacked standing to move for contempt alleging violations of the decree. The court found that to the extent the inmate suffered from a hearing loss, it was not such as would prevent him from participating fully in "activities, privileges, or programs" as required for him to come within the protections of the consent decree. (New York State Department of Correctional Services)

U.S. District Court
 SEX OFFENDERS

Doe v. Pataki, 427 F.Supp.2d 398 (S.D.N.Y. 2006.) Sex offenders filed a class action challenging the retroactive application of the registration and community notification provisions of the New York Sex Offender Registration Act. After entry of a stipulation of settlement limiting the registration period for most class members, the state legislature passed an amendment extending the registration periods. Class members moved to enforce the stipulation. The district court held that it had jurisdiction to enforce the stipulation of settlement, the Eleventh Amendment did not bar the court from enforcing the stipulation; and the court would enforce stipulation's provisions. (New York)

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

Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Corr'l Facility, New York)

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

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. District Court
 SEX OFFENDER
 PAROLE
 SELF INCRIMINATION

Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). A state inmate filed a petition for a writ of habeas corpus challenging a state parole board's denial of parole. The district court held that requiring the inmate to admit to the sexual crimes for which he was convicted, as a condition for completing a rehabilitation program, did not violate his Fifth Amendment right against self-incrimination, nor the inmate's substantive due process rights or the inmate's First Amendment right not to be compelled to speak. The court found that the requirement did not constitute sufficient compulsion to implicate the inmate's

Fifth Amendment right against self-incrimination, even though the inmate's chance at parole was diminished if he did not successfully complete the program, where the inmate's failure to accept responsibility for his sexual behavior did not automatically preclude him from parole. (State Correctional Institution, Houtzdale, PA)

U.S. Appeals Court
VOTING

Hayden v. Pataki, 449 F.3d 305 (2nd Cir. 2006). Black and Latino inmates and parolees brought an action against the New York Governor, Chairperson of the Board of Elections, and Commissioner of Corrections to challenge, as a violation of the Voting Rights Act (VRA), a statute disenfranchising incarcerated and paroled felons. The district court dismissed the claim. The inmates and parolees appealed and en banc review was granted. The appeals court affirmed and remanded, finding that the VRA prohibition against voting qualifications or prerequisites that resulted in a denial or abridgement of the right to vote on account of race or color did not apply to vote denial and dilution claims. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
VOTING

Muntaqim v. Coombe, 449 F.3d 371 (2nd Cir. 2006). A felon filed an action alleging that New York's felon disenfranchisement statute violated the Voting Rights Act. The district court granted the prison officials' motion for summary judgment, and the felon appealed. The appeals court held that felon was not resident of New York and thus did not have standing to challenge New York's felon disenfranchisement statute as a violation of the Voting Rights Act. The court noted that even though the felon had been incarcerated in New York prisons for the past 30 years, the inmate was a California resident before he was incarcerated in New York, he was never resident of New York, and he disavowed any intention to become a resident of New York in future. (Shawangunk Correctional Facility, New York)

U.S. District Court
CIVIL COMMITMENT
SMOKING

Thiel v. Nelson, 422 F.Supp.2d 1024 (W.D.Wis. 2006). Patients who were involuntarily committed to a mental health facility pursuant to a state's sexually violent persons statute filed state court actions challenging a smoking ban enacted at the facility. After removal to federal court, the patients moved to remand, and the officials moved to dismiss the complaint. The district court dismissed the complaint. The court held that the decision to completely ban smoking at the facility was rationally related to legitimate state interests of improving patients' health and safety, reducing fire hazards, maintaining clean and sanitary conditions, and reducing complaints and the threat of litigation from patients who did not smoke. The court found that the smoking ban did not violate the patients' equal protection rights, even if another state detention facility continued to permit its patients to smoke. The court noted that, unlike criminally confined offenders who may be subject to punishment as long as it is not cruel and unusual under the Eighth Amendment, persons who are civilly confined may not be punished. According to the court, involuntarily committed patients may be subjected to conditions that advance goals such as preventing escape and assuring the safety of others. The court also found that the patients were not deprived of their due process right to adequate treatment as result of state's decision to completely ban smoking at facility. (Sand Ridge Secure Treatment Center, Wisconsin)

8. CLASSIFICATION & SEPARATION

No cases.

9. CONDITIONS OF CONFINEMENT

U.S. District Court
LIGHTING

Wills v. Terhune, 404 F.Supp.2d 1226 (E.D.Cal. 2005). A state prison inmate brought a § 1983 action against corrections officials alleging that the constant illumination in the prison's security housing unit constituted cruel and unusual punishment. The inmate moved for a preliminary injunction. The district court denied the motion, finding that the constant illumination was not an unsafe condition of confinement and therefore did not violate the Eighth Amendment, and that the balance of harms was in favor of corrections officials. The inmate contended that the illumination prevented sleep, but the lighting consisted of a single low-watt bulb that the inmate conceded it was not bright enough to read or write by. The court noted that the officials provided evidence that established the security purpose for the illumination. (California State Prison, Corcoran)

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
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 that were 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
OUT OF CELL TIME
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 there was an arguable basis that the prisoner's three year period of administrative segregation, during which the prisoner was confined to his cell for all but five hours each week and was denied access to any outdoor recreation, violated the prisoner's rights. The court held that the district court abused its discretion by concluding there was no arguable basis that the denial of outdoor exercise was unconstitutionally cruel and unusual punishment. (Limon Correctional Facility, Colorado)

U.S. Appeals Court
TEMPERATURE

Spencer v. Bouchard, 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)

10. CRUEL AND UNUSUAL PUNISHMENT

U.S. District Court
LIGHTING

Wills v. Terhune, 404 F.Supp.2d 1226 (E.D.Cal. 2005). A state prison inmate brought a § 1983 action against corrections officials alleging that the constant illumination in the prison's security housing unit constituted cruel and unusual punishment. The inmate moved for a preliminary injunction. The district court denied the motion, finding that the constant illumination was not an unsafe condition of confinement and therefore did

not violate the Eighth Amendment, and that the balance of harms was in favor of corrections officials. The inmate contended that the illumination prevented sleep, but the lighting consisted of a single low-watt bulb that the inmate conceded it was not bright enough to read or write by. The court noted that the officials provided evidence that established the security purpose for the illumination. (California State Prison, Corcoran)

U.S. Appeals Court
CONDITIONS
EXERCISE

Fogle v. Pierson, 435 F.3d 1252 (10th Cir. 2006). A state prisoner brought a civil rights action against state prison officials. The district court dismissed the action and the prisoner appealed. The appeals court affirmed in part, reversed in part, and remanded. The court held that there was an arguable basis that the prisoner's three year period of administrative segregation, during which the prisoner was confined to his cell for all but five hours each week and was denied access to any outdoor recreation, violated the prisoner's rights. The court held that the district court abused its discretion by concluding there was no arguable basis that the denial of outdoor exercise was unconstitutionally cruel and unusual punishment. (Limon Correctional Facility, Colorado)

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
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)

11. DISCIPLINE

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)

12. EXERCISE AND RECREATION

U.S. Appeals Court
OUTDOOR RECREATION
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 there was an arguable basis that the prisoner's three year period of administrative segregation, during which the prisoner was confined to his cell for all but five hours each week and was denied access to any outdoor recreation, violated the prisoner's rights. The court held that the district court abused its discretion by concluding there was no arguable basis that the denial of

outdoor exercise was unconstitutionally cruel and unusual punishment. (Limon Corr'l Facility, Colorado)

13. EX-OFFENDERS

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)

14. FAILURE TO PROTECT

U.S. District Court
SUICIDE

Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who committed suicide in a holding cell brought a state court action against a city and officers, alleging deliberate indifference to the detainee's serious medical needs. The case was removed to federal court and the defendants moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide, given that she had not threatened or attempted suicide and that her intoxication was not per se indicative of a suicidal tendency. The court noted that there was no indication that the officers knew or should have known of any such vulnerability, given that the detainee had been detained in a holding cell on previous occasions without incident. The court held that the city was not liable for indifference based on its policies for identifying detainees at increased risk for suicide, where the city did not have a history of numerous suicides by detainees, the city had policies for removing harmful items from detainees and, following previous suicides in a holding cell, the city took corrective action by placing a video monitor in the cell. The court noted that a police department is under no Eighth Amendment duty to install a video monitoring system in an effort to prevent suicides in holding cells. (Scranton Police Department, Pennsylvania)

U.S. District Court
SUICIDE

Gaston v. Ploeger, 399 F.Supp.2d 1211 (D.Kan. 2005). The estate of a county jail detainee who committed suicide in his cell sued a sheriff, county, and jail officials, seeking compensation. The defendants moved for summary judgment, which the district court granted in part and denied in part. The court held that the county commissioners did not show deliberate indifference to the detainee, where there was a failure to connect them with any of the events leading up to the suicide. The court found that summary judgment was precluded by fact issues as to whether the sheriff was liable in his individual capacity for failing to train staff regarding suicide risk. The court also found that summary judgment was precluded by fact issues regarding the liability of officers who had contact with the detainee. The detainee allegedly exhibited strong signs of suicidal tendencies of which the officials were aware, or should have been aware, and it was unclear whether the officials took steps to address the risk. The court denied qualified immunity for the officials because the law was clearly established at the time of the suicide that officials were required to act if they had knowledge of a substantial risk to jail detainees. (Brown County Jail, Kansas)

U.S. District Court
OFFICER ON PRISONER
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. Appeals Court
PRISONER ON PRISONER
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
SUICIDAL 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 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 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 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)

15. FACILITIES

No cases.

16. FALSE IMPRISONMENT/ARREST

U.S. District Court
FALSE IMPRISONMENT

Garcia Rodriguez v. Andreu Garcia, 403 F.Supp.2d 174 (D.Puerto Rico 2005). An arrestee brought a civil rights claim alleging that he was illegally detained following his arrest on a warrant for failure to pay alimony. The district court held that the arrestee stated a claim for false imprisonment in violation of his Fourth Amendment rights. The arrestee alleged that the officers who arrested him had no authority under the arrest warrant to immediately incarcerate him, but should have caused his appearance before a judge. The arrestee was held in prison for five days until bail was paid by his relatives. (Bayamon Penitentiary, Puerto Rico)

U.S. Appeals Court
FALSE IMPRISONMENT

Figg v. Russell, 433 F.3d 593 (8th Cir. 2006). A prisoner brought an action against prison officials and parole board members, alleging that she was illegally incarcerated in violation of § 1983, and asserting state law claims for false imprisonment and invasion of privacy. The district court granted summary judgment for the defendants and the prisoner appealed. The appeals court affirmed in part and reversed in part. The court held that the parole board members, parole agent, warden and correctional officers were entitled to absolute immunity. The court noted that parole board members had the authority under state law to make such decisions based on the prisoner's signed parole agreement, and the warden's and correctional officers' incarceration of the prisoner was based on a facially valid court order. (South Dakota State Penitentiary)

U.S. District Court
FALSE IMPRISONMENT

North River Ins. Co. v. Broward County Sheriff's Office, 428 F.Supp.2d 1284 (S.D.Fla. 2006). An insurer sued a county sheriff's office and a number of its officers, seeking a determination of its coverage obligations regarding lawsuits involving former inmates who had been incarcerated over 20 years earlier, but who were recently exonerated. The insurer moved for summary judgment. The district court held that "bodily injury" and "personal injury" covered by the policy did not cover allegations of malicious prosecution and false imprisonment that occurred 20 years earlier. One of the complaints was filed by the estate of an inmate who died in prison in 2000 and was posthumously exonerated later that year. The second complaint was filed by a person who was arrested in 1979 and convicted in 1980 and spent 22 years in prison before he was exonerated and released from prison in June 2001. (Broward County Sheriff's Office, Florida)

17. FEMALE PRISONERS

U.S. District Court
SUICIDE

Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who committed suicide in a holding cell brought a state court action against a city and officers, alleging deliberate indifference to the detainee's serious medical needs. The case was removed to federal court and the defendants moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide, given that she had not threatened or attempted suicide and that her intoxication was not per se indicative of a suicidal tendency. The court noted that there was no indication that the officers knew or should have known of any such vulnerability, given that the detainee had been detained in a holding cell on previous occasions without incident. The court held that the city was not liable for indifference based on its policies for identifying detainees at increased risk for suicide, where the city did not have a history of numerous suicides by detainees, the city had policies for removing harmful items from detainees and, following previous suicides in a holding cell, the city took corrective action by placing a video monitor in the cell. The court noted that a police department is under no Eighth Amendment duty to install a video monitoring system in an effort to prevent suicides in holding cells. (Scranton Police Department, Pennsylvania)

U.S. Appeals Court
SEARCHES

Way v. County of Ventura, 445 F.3d 1157 (9th Cir. 2006). A female arrestee who had undergone a strip search with body cavity inspection upon booking on a misdemeanor charge of being under the influence of a controlled substance, brought § 1983 Fourth Amendment action against a county sheriff and against the deputy who had performed the search. The district court granted summary judgment for the arrestee, and defendants appealed. The appeals court affirmed in part and reversed in part. The court held that a suspicionless strip search conducted solely on basis of the county's blanket policy for controlled-substance arrestees offended the Fourth Amendment, where the intrusiveness of the search was extreme, the county did not show any link between the policy and legitimate security concerns for persons spontaneously arrested and detained temporarily on under-the-influence charges, and the arrestee was detained only until bail was posted and never entered the jail's general population. The court held that the defendants were entitled to qualified immunity because the appellate court in the county's federal circuit had never previously addressed the constitutionality of a body cavity search policy premised on the nature of drug offenses, and had held that the

nature of offense alone may sometimes provide reasonable suspicion. (Ventura County Sheriff's Department, California)

18. FOOD

No cases.

19. FREE SPEECH, EXPRESSION, AND ASSOCIATION

U.S. District Court
MAIL

Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). A state prisoner and his attorney-friend brought a civil rights action against prison officials alleging violation of their First and Fourteenth Amendment rights. The plaintiffs moved for a preliminary injunction, which the district court granted. The court held that the plaintiffs demonstrated irreparable injury to their rights from the officials' blanket prohibition of all legal mail perceived by the officials to not directly pertain to the prisoner's cases. The court found the ban to be more restrictive than was necessary. The officials suspected that the prisoner was providing paralegal services for cases not related to his own. (Nevada)

U.S. District Court
PUBLICATIONS
NEWSPAPERS

Calia v. Werholtz, 426 F.Supp.2d 1210 (D.Kan. 2006). A former state prison inmate, proceeding pro se, brought a § 1983 action against corrections officials, alleging that their enforcement against him of rules restricting certain inmates' ability to subscribe to newspaper, magazine, and newsletter publications violated his First Amendment rights. The court granted summary judgment for the officials. The court held that the inmate's claims for injunctive relief were moot and that the officials were entitled to Eleventh Amendment immunity insofar as the inmate's action sought monetary damages and was brought against the officials in their official capacities. The court found that the officials were entitled to qualified immunity because enforcement of the rules did not violate a clearly established constitutional right. (Lansing Correctional Facility, Kansas)

U.S. Appeals Court
VOTING

Hayden v. Pataki, 449 F.3d 305 (2nd Cir. 2006). Black and Latino inmates and parolees brought an action against the New York Governor, Chairperson of the Board of Elections, and Commissioner of Corrections to challenge, as a violation of the Voting Rights Act (VRA), a statute disenfranchising incarcerated and paroled felons. The district court dismissed the claim. The inmates and parolees appealed and en banc review was granted. The appeals court affirmed and remanded, finding that the VRA prohibition against voting qualifications or prerequisites that resulted in a denial or abridgement of the right to vote on account of race or color did not apply to vote denial and dilution claims. (Shawangunk Correctional Facility, New York)

U.S. Appeals Court
VOTING

Muntaqim v. Coombe, 449 F.3d 371 (2nd Cir. 2006). A felon filed an action alleging that New York's felon disenfranchisement statute violated the Voting Rights Act. The district court granted the prison officials' motion for summary judgment, and the felon appealed. The appeals court held that felon was not resident of New York and thus did not have standing to challenge New York's felon disenfranchisement statute as a violation of the Voting Rights Act. The court noted that even though the felon had been incarcerated in New York prisons for the past 30 years, the inmate was a California resident before he was incarcerated in New York, he was never resident of New York, and he disavowed any intention to become a resident of New York in future. (Shawangunk Correctional Facility, New York)

U.S. District Court
MAIL
PUBLICATIONS

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

U.S. District Court
PUBLICATIONS
FREE SPEECH

Smith v. Miller, 423 F.Supp.2d 859 (N.D.Ind. 2006). A state inmate filed a § 1983 action challenging prison officials' decision to confiscate his anarchist materials. The officials moved for summary judgment. The district court held that fact issues remained as to whether mere possession of anarchist literature presented a clear and present danger to prison security. The court opened its opinion by stating: "The issue of anarchism has raised its ugly face again, this time in a prison context...The question here focuses on whether or not prison officials at the Indiana State Prison are authorized to confiscate anarchist materials from inmates

incarcerated there...While the question presented here is a very close one, and it may be one on which the prison authorities will later prevail...there needs to be a more extensive factual record.” The court noted that if a trial were to be held, the court would attempt to appoint counsel for the plaintiff and make every effort to keep the case as narrowly confined as possible. According to the court, “Although it is a close case, there is enough here, if only barely enough, to keep the courthouse doors open for this claim which necessarily involves overruling and denying the defendants' motion.” (Indiana State Prison)

20. GOOD TIME

No cases.

21. GRIEVANCE PROCEDURES, PRISONER

U.S. Appeals Court
RETALIATION

Morris v. Powell, 449 F.3d 682 (5th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment right to use the prison grievance system. Following denial of the defendants' first motion for summary judgment, the appeals court remanded for consideration of whether an inmate's retaliation claim must allege more than a *de minimis* adverse act. On remand, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) when addressing an issue of apparent first impression for the court, prisoners bringing § 1983 retaliation claims against prison officials must allege more than an inconsequential or *de minimis* retaliatory act to establish a constitutional violation; (2) the officials' alleged actions in moving the inmate to a less desirable job within the prison did not rise to the level of an actionable retaliation; (3) the inmate's claim that he was transferred to an inferior and more dangerous prison satisfied the *de minimis* threshold; and (4) the defendants were entitled to qualified immunity on the inmate's job transfer claim. The court noted that although the inmate's official job classification was switched from the commissary to the kitchen for about six weeks, he was actually made to work in the kitchen for only a week at most, and he spent just one day in the “pot room,” which was evidently an unpleasant work station, after which he was moved to the butcher shop, about which he raised no complaints. (Telford Unit, Texas Department of Criminal Justice)

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

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that “rules” on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment received from the physician's assistant to allow those concerns to be dealt with administratively. (Merrimack County House of Corrections, New Hampshire)

22. HABEAS CORPUS

U.S. District Court
ACCESS TO COURTS
ALIEN

Adem v. Bush, 425 F.Supp.2d 7 (D.D.C. 2006). In a habeas case, the petitioner, who was detained at the United States Naval Base in Guantanamo Bay, Cuba, filed a motion to hold federal respondents in contempt of a protective order governing access to counsel for Guantanamo detainees and a motion to expedite his access to counsel. The district court held that the protective order did not require evidence of authority to represent a detainee as a prerequisite to counsel meeting with a detainee, but rather, the protective order provided that counsel who purportedly represented a particular detainee provide evidence of their authority to represent that

detainee within 10 days of counsel's second visit with the detainee. (United States at the Naval Base, Guantanamo Bay, Cuba)

U.S. District Court
SEGREGATION
PROGRAMS

Barq v. Daniels, 428 F.Supp.2d 1147 (D.Or. 2006). A federal prisoner filed a petition for a writ of habeas corpus, alleging that his removal from his originally assigned class under the Bureau of Prisons' (BOP) drug and alcohol treatment program (DAP), and subsequent placement into another class that graduated on a later date violated his constitutional rights. The district court held that it was arbitrary and capricious and an abuse of discretion for BOP to rely exclusively on the number of sessions that it forced the petitioner to miss in deciding to remove the prisoner from his original DAP class. The prisoner had been placed in a special housing unit (SHU) through no fault of his own, and he missed classes as a result. The court noted that had the prisoner been permitted to rejoin his class, as of graduation he would have completed more sessions than seventy-five percent of the other DAP participants. (FCI Sheridan, Oregon)

U.S. District Court
PAROLE

Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). A state inmate filed a petition for a writ of habeas corpus challenging a state parole board's denial of parole. The district court held that requiring the inmate to admit to the sexual crimes for which he was convicted, as a condition for completing a rehabilitation program, did not violate his Fifth Amendment right against self-incrimination, nor the inmate's substantive due process rights or the inmate's First Amendment right not to be compelled to speak. The court found that the requirement did not constitute sufficient compulsion to implicate the inmate's Fifth Amendment right against self-incrimination, even though the inmate's chance at parole was diminished if he did not successfully complete the program, where the inmate's failure to accept responsibility for his sexual behavior did not automatically preclude him from parole. (State Corr'l Institution, Houtzdale, Pennsylvania)

U.S. Appeals Court
DISCIPLINE

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)

23. HYGIENE-PRISONER PERSONAL

No cases.

24. IMMUNITY

U.S. District Court
QUALIFIED IMMUNITY

Kaufman v. McCaughtry, 422 F.Supp.2d 1016 (W.D.Wis. 2006). A state prison inmate brought a § 1983 action against prison officials, challenging their refusal to permit him to organize an atheist study group. Following remand from the court of appeals, the officials moved for summary judgment. The district court held that it was not clearly established in 2002 that atheism was a "religion," and the officials were qualifiedly immune from suit. The court noted that the Free Exercise clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA) limit the government's ability to burden a prisoners' exercise of sincerely-held religious beliefs, even when governmental burdens are imposed neutrally upon believer and non-believer alike. The court noted that the courts had recognized that secular humanism and other non-theistic belief systems were protected by the Free Exercise Clause, but the inmate did not tell officials he was an adherent of any such belief system, and did not indicate that his proposed group was connected to "religious" principles. (Waupun Correctional Institution, Wisconsin)

U.S. Appeals Court
ELEVENTH AMENDMENT

Thomas v. St. Louis Bd. of Police Com'rs, 447 F.3d 1082 (8th Cir. 2006). An arrestee who was involuntarily committed to a mental hospital brought an action against a city board of police commissioners and police officers, alleging false arrest, unlawful detention and confinement, malicious abuse of process, and intentional infliction of emotional distress. The district court dismissed the case but the appeals court reversed and remanded, finding that the board was not entitled to Eleventh Amendment sovereign immunity. The court found that binding precedent directed that the board is not an arm of the state and thus was not entitled to Eleventh Amendment immunity. (St. Louis Board of Police Commissioners)

25. INTAKE AND ADMISSIONS

U.S. District Court
SEARCHES

Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) Arrestees brought suit, individually and on behalf of a class of others similarly situated, against a county sheriff's department, county sheriff, county undersheriff, former county undersheriff, a jail administrator and a lieutenant, challenging the constitutionality of the search policy of the county jail. The district court held that the policy, pursuant to which arrestees being admitted to a county jail were effectively subjected to strip searches, violated the Fourth Amendment and that the arrestees were entitled to permanent injunctive relief. The court found that the arrestees were the "prevailing parties" entitled to an award of attorney fees. According to the court, the Fourth Amendment precludes officials from performing strip searches and/or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest. The court held that the indiscriminate strip-searching of misdemeanor arrestees is unconstitutional. The policy required arrestees to remove their clothing in front of a corrections officer (CO) and take a shower, regardless of the nature of their crime and without any determination that there was a reasonable suspicion that they possessed contraband. The court found that the policy violated the Fourth Amendment, despite the claim that the written policy did not involve either a command for the arrestee to undress completely or a command for the CO to inspect the naked arrestee. The court noted that the procedure that was followed in fact by the COs required all admittees to remove their clothes, submit to a visual examination by the CO, and shower. The court held that the arrestees were entitled to a permanent injunction prohibiting county jail officials from conducting a strip search, as set forth in the jail's "change out" procedure. (Montgomery County Jail, New York)

U.S. District Court
SEARCHES

Tardiff v. Knox County, 425 F.Supp.2d 190 (D.Me.2006). A class action suit was brought against a county, its sheriff, and unidentified jail correctional personnel under § 1983, claiming that the Fourth Amendment rights of detainees alleged to have committed non-violent, non-weapons, and non-drug felonies, and detainees alleged to have committed misdemeanors, were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. Summary judgment was granted in part and denied in part to the plaintiffs, and the defendants filed a motion for reconsideration. The district court held that: (1) evidence, including booking logs at the county jail, demonstrated that corrections officers routinely strip searched misdemeanor detainees without reasonable suspicion; (2) a jail administrator's letter was highly probative of what municipal policymakers knew about ongoing strip search practices at the jail; (3) intake and release log evidence provided proof that, for at least some corrections officers, strip searching was customary; and (4) the actions taken by the county in response to the unconstitutional practice of strip searching misdemeanor detainees amounted to acquiescence in it. According to the court, a county jail inspection report provided information about the circumstances surrounding search practices at the jail, as well as the knowledge of the county policymakers before the commencement of the class period, and, thus, was relevant in the class action suit. (Knox County Jail, Maine)

U.S. District Court
MEDICAL SCREENING
SEARCHES

Thompson v. County of Cook, 428 F.Supp.2d 807 (N.D.Ill. 2006). A detainee held for civil contempt brought an action against a county and a sheriff, alleging civil rights violations due to invasive search procedures. Following a jury verdict for the defendants, the detainee moved for a new trial. The district court held that a jury's verdict as to an unreasonable body cavity search was against the manifest weight of evidence. The court noted that, notwithstanding the detainee's purported intermingling with others who were incarcerated, he was not charged with any crime, and there was no evidence that deputies noticed anything suspicious about detainee which would have otherwise justified a search. The detainee was subjected to an invasive urethral swabbing procedure without his consent. The detainee had been held in civil contempt and ordered held in custody after he refused to sign certain documents related to his pending divorce proceedings. Upon arrival at the jail, the detainee was processed along with approximately 250 other new inmates. After spending some time in a holding pen, the detainee and others were photographed and given identification cards. An employee from Cermak Health Services, the agency responsible for administering medical treatment to detainees at the jail, then asked Thompson a number of medical screening questions. During the interview, the detainee responded to the questions on a standard form concerning his medical history and signed the following "consent for treatment" portion of the form: *I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook County Jail. I also consent to ongoing medical treatment by Cermak Health Services staff for problems identified during this process. I understand I may be asked to sign forms allowing other medical treatments. I understand that every effort will be made by CHS staff to keep my medical problems confidential. I understand the policy of CHS regarding access to health care at Cook County Jail.* The defendants presented evidence at trial that during the interview, an employee informed the detainee of his right to refuse the medical screening, but the detainee denied that anyone informed him of his right to refuse to consent. Following the medical screening interview, his personal property was inventoried and then he and other inmates then underwent a urethral swabbing procedure. He claimed that he felt pain both during and after the procedure.

(Cook County Jail, Illinois)

26. JUVENILES

U.S. Appeals Court
PROGRAMS
PLRA- Prisoner Litigation
Reform Act

Handberry v. Thompson, 446 F.3d 335 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983 and the New York education code, alleging failure to provide adequate educational services. After the entry of a declaratory judgment in favor of the inmates, the district court entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court held that the injunction was a necessary and narrowly drawn means of effectuating prospective relief, as required by Prison Litigation Reform Act (PLRA), even though the court described the plaintiff class as consisting of inmates housed in one specific facility, where that was the only facility that provided educational services, and inmates at city's other jails had to transfer there to receive such services. According to the court, the special monitor appointed by the district court to oversee implementation of the order was not a "special master," and thus the requirement that the city and state pay for the special monitor did not violate the provision of Prison Litigation Reform Act (PLRA) requiring expenses for special masters to be borne by the judiciary. (New York City Department of Education, New York City Department of Corrections, Rikers Island)

27. LIABILITY

U.S. Appeals Court
NEGLIGENCE
FTCA- Federal Tort Claims
Act

Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). A detainee brought an action against the United States Marshals Service, various county jails where he was detained, doctors in a federal prison, a private medical center, a private doctor, and others, alleging claims under § 1983 and the Federal Tort Claims Act (FTCA), and alleging negligence under state law. The district court dismissed the action and the detainee appealed. The appeals court affirmed. The court held that filing of an administrative claim with the United States Marshals Service was insufficient to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA), for the purpose of § 1983 claims against county jails and a federal prison doctor. The court noted that administrative claims against the county jails had to be directed to those facilities, and claims alleging wrongdoing by a doctor at a federal prison had to be filed with the federal Bureau of Prisons. The court ruled that FTCA claims against county facilities were barred by the independent contractor exemption of the FTCA. According to the court, allegations did not state deliberate indifference claims against a private medical center or a private doctor with allegations that someone at a private medical center overmedicated him, and that a private doctor failed to properly diagnose the severity of his foot injury. The detainee had been arrested on federal drug and firearm charges and he was held without bail. During his pretrial detention, the United States Marshals Service lodged him in several county jail facilities with which it contracts, and he also spent time in two federal facilities. (Hillsborough County Department of Corrections, NH; Cumberland County Jail, Maine; Merrimack County House of Corrections, NH; FMC Rochester, MN; Strafford County House of Corrections, NH; FCI Raybrook, NY)

U.S. District Court
CLASS ACTION
PLRA- Prisoner Litigation
Reform Act

Ginest v. Board of County Com'rs of Carbon County, 423 F.Supp.2d 1237 (W.D.Wyo. 2006). County jail inmates filed a motion for an award of attorney fees and expenses after obtaining a consent decree in a § 1983 class action against a county and sheriff in his official capacity, for deliberate indifference to their medical needs, and a contempt order against the defendants. The district court held that: (1) the class counsel for the inmates was entitled to attorney fees for time and effort spent in monitoring compliance by the county and its sheriff with the remedial plan; (2) the Prison Litigation Reform Act (PLRA) did not preclude an award of attorney fees to the class counsel; (3) the counsel would be awarded a 25% fee multiplier or enhancement; and (4) the counsel was entitled to the award of expenses for his travel to Wyoming to review medical records and perform other activities on behalf of the inmates. (Carbon County, Wyoming)

U.S. Appeals Court
SPECIAL MASTER
PLRA- Prisoner Litigation
Reform Act

Handberry v. Thompson, 446 F.3d 335 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983 and the New York education code, alleging failure to provide adequate educational services. After the entry of a declaratory judgment in favor of the inmates, the district court entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court held that the injunction was a necessary and narrowly drawn means of effectuating prospective relief, as required by Prison Litigation Reform Act (PLRA), even though the court described the plaintiff class as consisting of inmates housed in one specific facility, where that was the only facility that provided educational services, and inmates at city's other jails had

to transfer there to receive such services. According to the court, the special monitor appointed by the district court to oversee implementation of the order was not a “special master,” and thus the requirement that the city and state pay for the special monitor did not violate the provision of Prison Litigation Reform Act (PLRA) requiring expenses for special masters to be borne by the judiciary. (New York City Department of Education, New York City Department of Corrections, Rikers Island)

U.S. District Court
INSURANCE

North River Ins. Co. v. Broward County Sheriff's Office, 428 F.Supp.2d 1284 (S.D.Fla. 2006). An insurer sued a county sheriff's office and a number of its officers, seeking a determination of its coverage obligations regarding lawsuits involving former inmates who had been incarcerated over 20 years earlier, but who were recently exonerated. The insurer moved for summary judgment. The district court held that “bodily injury” and “personal injury” covered by the policy did not cover allegations of malicious prosecution and false imprisonment that occurred 20 years earlier. One of the complaints was filed by the estate of an inmate who died in prison in 2000 and was posthumously exonerated later that year. The second complaint was filed by a person who was arrested in 1979 and convicted in 1980 and spent 22 years in prison before he was exonerated and released from prison in June 2001. (Broward County Sheriff's Office, Florida)

U.S. District Court
PRIVATE OPERATOR
SOVEREIGN IMMUNITY

Stephens v. Correctional Services Corp., 428 F.Supp.2d 580 (E.D.Tex. 2006). A pretrial detainee brought an action against a private jail corporation, alleging civil rights violations and common law negligence stemming from an attack while he was incarcerated. The corporation moved for dismissal. The district court held that the corporation was not entitled to state sovereign immunity and that the corporation was potentially liable under § 1983. The court found that the detainee properly stated a negligence claim, and also a viable claim for failure to train and/or supervise. The court noted that although the establishment and maintenance of jails were “governmental functions” under state law, jail services provided by a private entity were not. The detainee alleged that the corporation had a duty to protect his well-being and to ensure his reasonable safety while incarcerated, and that the corporation breached such duty by not properly segregating him from violent inmates who threatened his life. He alleged that he informed officials of the death threats and they took no action, and that he was severely beaten by three prisoners and suffered life-threatening injuries. (Jefferson County Corrections Facility, Texas)

28. MAIL

U.S. District Court
LEGAL MAIL

Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). A state prisoner and his attorney-friend brought a civil rights action against prison officials alleging violation of their First and Fourteenth Amendment rights. The plaintiffs moved for a preliminary injunction, which the district court granted. The court held that the plaintiffs demonstrated irreparable injury to their rights from the officials’ blanket prohibition of all legal mail perceived by the officials to not directly pertain to the prisoner’s cases. The court found the ban to be more restrictive than was necessary. The officials suspected that the prisoner was providing paralegal services for cases not related to his own. (Nevada)

U.S. Appeals Court
POSTAGE

Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). An inmate brought a civil rights action against prison officials, challenging a regulation governing possession of stamps. The district court entered judgment in favor of the officials and inmate appealed. The appeals court held that the inmate did not have a constitutional right to unlimited free postage for non-legal mail, and the regulation was reasonably related to legitimate penological interests, and thus did not violate the inmate's First Amendment right to send outgoing non-legal mail. The prison regulation prevented certain inmates in keeplock from receiving stamps through the mail and permitted them to receive only one free stamp per month for personal use. The court noted that stamps could be used by inmates as a form of currency, and the regulation furthered the legitimate goals of reducing thefts, disputes, and unregulated prisoner transactions. (New York State Department of Correctional Services)

U.S. District Court
LEGAL MAIL

Strong v. Woodford, 428 F.Supp.2d 1082 (C.D.Cal. 2006). A prisoner filed a § 1983 action, alleging prison officials mishandled or destroyed his outgoing legal mail. The defendants filed a motion to dismiss. The district court held that the prisoner failed to state a First Amendment violation with respect to access to the courts and that the prisoner's allegations that prison officials negligently destroyed or mishandled his legal mail did not support an actionable claim under § 1983. The court held that the prisoner's allegations of supervisor liability did not state a claim under § 1983 and that the officials were immune from liability for money damages or other retroactive relief. According to the court, a delay in filing a legal document without any attendant adverse consequences does not constitute actual harm, as required for an inmate to assert claims based on a denial of his First Amendment rights in legal correspondence. (California)

29. MEDICAL CARE

- U.S. District Court
SUICIDES
- Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who committed suicide in a holding cell brought a state court action against a city and officers, alleging deliberate indifference to the detainee’s serious medical needs. The case was removed to federal court and the defendants moved for summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide, given that she had not threatened or attempted suicide and that her intoxication was not per se indicative of a suicidal tendency. The court noted that there was no indication that the officers knew or should have known of any such vulnerability, given that the detainee had been detained in a holding cell on previous occasions without incident. The court held that the city was not liable for indifference based on its policies for identifying detainees at increased risk for suicide, where the city did not have a history of numerous suicides by detainees, the city had policies for removing harmful items from detainees and, following previous suicides in a holding cell, the city took corrective action by placing a video monitor in the cell. The court noted that a police department is under no Eighth Amendment duty to install a video monitoring system in an effort to prevent suicides in holding cells. (Scranton Police Department, Pennsylvania)
- U.S. Appeals Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
TRANSPORTATION
- Martinez v. Garden, 430 F.3d 1302 (10th Cir. 2005). A state prisoner brought a civil rights action against prison officials, alleging they were deliberately indifferent to his serious medical needs. The district court dismissed the action and the prisoner appeals. The appeals court reversed and remanded. The court held that the prisoner’s allegations that the officials knew of his serious medical condition, but failed to inform him of medical appointments or to arrange transportation, were sufficient to state a claim for deliberate indifference. (Utah State Prison)
- U.S. District Court
DELIBERATE
INDIFFERENCE
FAILURE TO PROVIDE
CARE
- Ammons v. Lemke, 426 F.Supp.2d 866 (W.D.Wis. 2006). A state inmate filed a § 1983 action alleging that a prison’s medical officials were deliberately indifferent to his serious medical conditions. The district court held that the inmate’s wrist injury constituted a “serious medical condition,” for the purposes of his Eighth Amendment claim against prison medical officials for deliberate indifference, where the injury was diagnosed as a fracture of his ulnar styloid process, the injury caused his bone structure to split, the wrist sustained permanent injury and bone disfigurement, and the injury continued to cause him pain. The court found that a physician’s failure to immediately prescribe pain medication for the inmate or to make an appointment for the inmate to see an orthopedic specialist after examining the inmate’s fractured wrist did not demonstrate deliberate indifference to inmate’s serious medical condition necessary to establish claim under Eighth Amendment, where the physician examined the inmate twice in one month’s time, reviewed an x-ray of his wrist, determined initially that no treatment was possible because the injury was the result of old fracture, but later prescribed pain medication and arranged for the inmate to see an orthopedic specialist. (Stanley Correctional Institution, Wisconsin)
- U.S. District Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act
- Arce v. O’Connell, 427 F.Supp.2d 435 (S.D.N.Y. 2006). A purportedly hearing-impaired inmate brought a pro se suit against employees of a corrections department, alleging that they violated his rights under the Americans with Disabilities Act (ADA), as well as the Eighth and Fourteenth Amendments, by failing to provide reasonable accommodations for his hearing impairment and retaliating against him after he filed grievances regarding the lack of such accommodations. The defendants moved for summary judgment and the court dismissed the case. The district court held that the inmate was not a member of the class protected by a consent decree addressing the treatment of deaf or hard-of-hearing inmates and thus, he lacked standing to move for contempt alleging violations of the decree. The court found that to the extent the inmate suffered from a hearing loss, it was not such as would prevent him from participating fully in “activities, privileges, or programs” as required for him to come within the protections of the consent decree. (New York State Department of Correctional Services)
- U.S. District Court
REHABILITATION ACT
ADA- Americans with
Disabilities Act
AIDS- Acquired Immune
Deficiency Syndrome
TRANSPORTATION
- Dukes v. Georgia, 428 F.Supp.2d 1298 (N.D.Ga. 2006). A pretrial detainee brought an action against state and county defendants as well as jail personnel, alleging deliberate indifference to a serious medical need, violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and medical malpractice. The defendants filed motions for summary judgment. The court held that jail personnel did not violate the Americans with Disabilities Act (ADA) or the Rehabilitation Act when an officer and others allegedly told other inmates of the detainee’s status as an HIV infected person, where the detainee did not show that such disclosure denied him the benefits of any program or service or that it discriminated against him. The court also found no ADA or Rehabilitation Act violation when an officer did not place a mask on the detainee when he was being transported to the hospital, where the failure to place a mask on the detainee did not deny him the benefits of any program or service or discriminate against him. The court noted that transportation can be construed as a “program or service provided by the public entity” for the purposes of Title II of the Americans with Disabilities Act (ADA). According to the court, even if a physician’s failure to diagnose the pretrial detainee’s cryptococcus was negligent or even severely negligent, her actions and treatment of the detainee did

not constitute deliberate indifference to the detainee's serious medical needs in violation of due process where the detainee was receiving treatment for his symptoms and his underlying illness, HIV, and while in hindsight it appeared that a lesion shown by the x-rays was in fact cryptococcus, there was no showing that indicated that the physician was ever aware of that severe risk. The court held that a jail nurse was not deliberately indifferent to the detainee's serious medical needs in violation of the due process clause, where she responded to all requests for medical service and conveyed the requests and relevant information to a physician, and did not have substantial knowledge of a serious medical risk when she observed that the detainee was not moving about, was urinating on his mat, and was cursing at the staff. (Coweta County Jail, Georgia)

U.S. District Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act

Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Correctional Facility, New York)

U.S. District Court
HEARING IMPAIRED
ADA- Americans with
Disabilities Act

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Fleming v. LeFevere, 423 F.Supp.2d 1064 (C.D.Cal. 2006). An inmate who was denied treatment for Hepatitis C sued a prison's staff psychiatrist who reported that the prisoner was a fairly poor candidate for treatment of Hepatitis C with Interferon, alleging state and federal constitutional violations. The psychiatrist filed a motion for summary judgment which the court granted. The district court held that the inmate failed to establish that the psychiatrist was deliberately indifferent to the inmate's serious medical need in violation of his rights under the Eighth Amendment, because the prisoner's claim was based solely on his disagreement with the psychiatrist's medical evaluation, and he failed to provide any competent evidence to satisfy his burden of showing that the psychiatrist chose a medically unacceptable course of treatment in conscious disregard of any risk to the inmate's health. The court held that the inmate failed to state a claim under the Fourteenth Amendment, and that even assuming the psychiatrist violated the inmate's constitutional rights, the psychiatrist was entitled to qualified immunity. According to the court, the inmate could not state a claim for personal injury damages against the psychiatrist based on the equal protection clause of the California Constitution, and the inmate could not state a claim against the psychiatrist based on a clause of California Constitution providing that state constitutional rights were not dependent on those guaranteed by the United States Constitution. (California Men's Colony)

U.S. Appeals Court
 DELIBERATE
 INDIFFERENCE

Johnson v. Doughty, 433 F.3d 1001 (7th Cir. 2006). A former inmate brought a § 1983 action against prison officials and doctors alleging deliberate indifference to his medical needs. The district court granted summary judgment to some officials, and entered final judgment after a bench trial for the remaining defendants. The inmate appealed and the appeals court affirmed. The court noted that the necessity of surgery for the inmate’s hernia was not obvious to a non-medical grievance counselor and warden, and the reviewing administrators determined that the inmate’s situation had been addressed appropriately. The examining doctor formed the professional opinion that surgery was not required and did not subsequently observe any worsening of the condition that would necessitate surgery. (Graham Correctional Center, Illinois)

U.S. Appeals Court
 HANDICAP
 DELIBERATE
 INDIFFERENCE

Johnson v. Snyder, 444 F.3d 579 (7th Cir. 2006). A state prisoner, who was an amputee, brought a civil rights action against various prison officials, alleging violation of the Eighth and Fourteenth Amendments. The district court granted summary judgment in favor of the officials and the prisoner appealed. The appeals court affirmed. The court held that the director of the state Department of Corrections was not liable absent evidence that the director was actually aware of the prisoner’s situation or his complaints. The court concluded that the health care administrator was not deliberately indifferent to the medical needs of the prisoner where the administrator responded in a timely manner to the prisoner’s grievance, noted that the prisoner did not need a crutch because of his prosthesis, and recommended that a concrete bench be placed in the shower. The court also found that the disability coordinator was not deliberately indifferent because the coordinator investigated the prisoner’s complaint, acknowledged a problem with the shower and then understood that a stronger chair would be provided, and there was no evidence that the coordinator was aware that a stronger chair was not provided or that he had an affirmative duty to investigate further. The court held that the warden was not deliberately indifferent where the warden was aware of the prisoner’s request, he concurred with other officials’ recommendation for a different chair, and evidence showed that he believed that his subordinates were attending to the issue. According to the court, the superintendent was not deliberately indifferent, where the superintendent contacted a subordinate prison official who supervised the shower personnel and discussed the problem, he suggested reinforcing the chair, and since he did not hear further about the problem he assumed it had been resolved. (Menard Correctional Center, Illinois)

U.S. District Court
 DELIBERATE
 INDIFFERENCE
 FAILURE TO PROVIDE
 CARE

MacLeod v. Kern, 424 F.Supp.2d 260 (D.Mass. 2006). A prisoner brought an action against correctional and health care defendants, alleging that they violated his civil rights by displaying deliberate indifference to his medical needs relating to his Hepatitis C, a stomach mass and a testicular cyst. The defendants moved for summary judgment, and the district court granted the motion. The court held that the course of treatment provided for the prisoner’s serious medical needs, even if inadequate, was not so inadequate as to shock the conscience, and thereby constitute deliberate indifference in violation of the Eighth Amendment. According to the court, although the defendants denied medication for the prisoner’s Hepatitis C, denial of the medication was due to the reason that the prisoner’s treatment would have been adversely affected by the prisoner’s prior drug use. (University of Massachusetts Correctional Health, Old Colony Correctional Center in Bridgewater, Massachusetts)

U.S. District Court
 DELAY IN CARE
 DELIBERATE
 INDIFFERENCE

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician’s assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that “rules” on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee’s criminal defense attorney into the facility’s refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee’s complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician’s assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee’s behalf by an investigator for the detainee’s criminal defense attorney did not allege any misfeasance on the part of the physician’s assistant or even mention him, and therefore did not give the facility’s officials sufficient notice of the detainee’s concerns about treatment received from the physician’s assistant to allow those concerns to be dealt with administratively. The court found that material issues of fact existed as to whether the superintendent and assistant superintendent denied outside care to the detainee on prohibited bases, such as the detainee’s ability or willingness to pay for such medical services, precluding summary judgment for the officials on the detainee’s claims alleging deliberate indifference to his serious medical needs. But the court concluded that a delay in having the detainee examined by an orthopedic surgeon did not cause him any additional pain or permanent injury, given that the specialists who eventually

saw the detainee did not believe that surgery was an appropriate treatment for his shoulder pain and the measures recommended did not appreciably reduce the detainee's pain and discomfort, such that implementing them earlier would not have measurably improved his condition. The court found that the detainee's injury did not amount to a "serious medical need" for alleged deliberate indifference to his serious medical needs. (Merrimack County House of Corrections, New Hampshire)

U.S. District Court
FAILURE TO PROVIDE
CARE
DELIBERATE
INDIFFERENCE

Thomas v. Bruce, 428 F.Supp.2d 1161(D.Kan. 2006). A state prisoner brought a civil rights action under § 1983 against prison officials, asserting an Eighth Amendment claim for deliberate indifference to his serious medical needs. The district court granted the officials' motion for summary judgment, but the court of appeals reversed and remanded. On remand, the district court held that the officials did not violate the prisoner's Eighth Amendment right to be free from cruel and unusual punishment by allegedly failing to treat his Hepatitis C, where the officials recognized the prisoner's condition and provided ongoing monitoring. The court noted that, when the prisoner's high enzyme levels warranted further testing and a liver biopsy, officials undertook steps to ensure treatment through the established administrative process. (Hutchinson Correctional Facility, Kansas)

U.S. District Court
INTAKE SCREENING

Thompson v. County of Cook, 428 F.Supp.2d 807 (N.D.Ill. 2006). A detainee held for civil contempt brought an action against a county and a sheriff, alleging civil rights violations due to invasive search procedures. Following a jury verdict for the defendants, the detainee moved for a new trial. The district court held that a jury's verdict as to an unreasonable body cavity search was against the manifest weight of evidence. The court noted that, notwithstanding the detainee's purported intermingling with others who were incarcerated, he was not charged with any crime, and there was no evidence that deputies noticed anything suspicious about detainee which would have otherwise justified a search. The detainee was subjected to an invasive urethral swabbing procedure without his consent. The detainee had been held in civil contempt and ordered held in custody after he refused to sign certain documents related to his pending divorce proceedings. Upon arrival at the jail, the detainee was processed along with approximately 250 other new inmates. After spending some time in a holding pen, the detainee and others were photographed and given identification cards. An employee from Cermak Health Services, the agency responsible for administering medical treatment to detainees at the jail, then asked Thompson a number of medical screening questions. During the interview, the detainee responded to the questions on a standard form concerning his medical history and signed the following "consent for treatment" portion of the form: *I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook County Jail. I also consent to ongoing medical treatment by Cermak Health Services staff for problems identified during this process. I understand I may be asked to sign forms allowing other medical treatments. I understand that every effort will be made by CHS staff to keep my medical problems confidential. I understand the policy of CHS regarding access to health care at Cook County Jail.* The defendants presented evidence at trial that during the interview, an employee informed the detainee of his right to refuse the medical screening, but the detainee denied that anyone informed him of his right to refuse to consent. Following the medical screening interview, his personal property was inventoried and then he and other inmates then underwent a urethral swabbing procedure. He claimed that he felt pain both during and after the procedure. (Cook County Jail, Illinois)

30. MENTAL PROBLEMS (PRISONER)

No cases.

31. PERSONNEL

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

Almond v. Westchester County Dept. of Corrections, 425 F.Supp.2d 394 (S.D.N.Y. 2006). A probationary corrections officer who was terminated after she displayed hysterical behavior and underwent a psychiatric evaluation following training in disturbance control and use of a baton, brought an action against a county Department of Corrections (DOC) alleging wrongful discharge in violation of Americans with Disabilities Act (ADA) and New York State Human Rights Law (NYSHRL). The employer moved for summary judgment and the district court granted the motion. The court held that the officer failed to establish a prima facie case of disability discrimination under ADA, on the theory that the employer perceived her to be either a drug addict or mentally ill, where she did not prove that the employer perceived her to be drug addict despite her statement that she had overmedicated herself, her admission to taking some sort of drug on the day of the subject incident, and her superior's order that a drug test be administered, and assuming that the employer perceived her to be mentally ill. The court concluded that she did not show that the employer believed she was impaired from working or from performing some other major life activity. The employer alleged that the plaintiff complained that the exercises were "too hard," and asserted that she had been exhibiting nervous and

erratic behavior throughout the day, crying and complaining that the training was too tough. The court declined to exercise supplemental jurisdiction over the officer's remaining claim under NYSHRL, instead dismissing it without prejudice. (Department of Corrections for Westchester County, New York)

U.S. Appeals Court
 TERMINATION
 TITLE VII
 FREE SPEECH
 RACIAL DISCRIMINATION

Burke-Fowler v. Orange County, Fla., 447 F.3d 1319 (11th Cir. 2006). A former correctional officer brought an action against a county alleging that her termination was racially discriminatory, in violation of Title VII and § 1981, and was based on her marital status in violation of state law. The district court granted the county's motion for summary judgment and the officer appealed. The appeals court affirmed, finding that the African-American officer failed to establish that her discharge for developing an intimate romantic relationship with, and later marrying, an inmate, in violation of a prison's anti-fraternization policy, was the result of racial discrimination and that the county did not discriminate against the officer simply because she was married, in violation of the Florida Civil Rights Act. The court noted that even though white officers who had close relationships with inmates were not as severely disciplined, one white officer developed the relationship with a former inmate without the knowledge of her partner's criminal history, another white officer had established his relationship with an inmate prior to her arrest, and two other white officers had relationships that were not romantic, while the African-American officer's relationship with an inmate commenced with her full awareness of his status as an inmate and she pursued the relationship shortly after he left her direct authority. (Orange County Corrections Department, Florida)

U.S. Appeals Court
 TITLE VII
 DEMOTION
 RACIAL DISCRIMINATION

Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971 (7th Cir. 2006). A state corrections employee brought an action against the agency and supervisors under Title VII and § 1983, alleging that he was demoted because of his race. The district court entered judgment upon jury verdict in favor of the employee, and defendants appealed. The appeals court affirmed, finding that evidence was sufficient to support the jury's verdict in favor of the employee. The court noted that although there was no direct evidence that the agency and supervisors were motivated by racial bias when they demoted the employee after he was found to have harassed a co-worker, an agency memo drafted and approved by the supervisors indicated that the employee's violation was a category B violation. Two white employees received far less severe penalties for category B violations, and testimony that the supervisors thought the employee's violation was more serious than category B came from the supervisors rather than from disinterested witnesses and was not supported by documentary evidence. (Jackson Correctional Institution, Wisconsin)

U.S. District Court
 TERMINATION
 DUE PROCESS
 RETALIATION

Henderson v. New York, 423 F.Supp.2d 129 (S.D.N.Y. 2006). A terminated state corrections officer sued a lieutenant and commissioner, asserting race discrimination and other claims. The lieutenant and commissioner moved for summary judgment and the motions were granted. The district court held that: (1) the lieutenant's alleged pre-termination actions, if proven, were not adverse employment actions; (2) the officer's termination was not causally related to his deposition testimony, and thus did not constitute retaliation; (3) the commissioner did not retaliate against the officer; (4) the officer received procedural due process prior to his termination; (5) the officer's termination did not constitute a substantive due process violation; and (6) the lieutenant's alleged actions, if proven, did not violate the officer's substantive due process rights. (Taconic Correctional Facility, Beacon Correctional Facility, New York)

U.S. Appeals Court
 RELIGION
 FREE SPEECH
 DISCRIMINATION

Shrum v. City of Coweta, Okla., 449 F.3d 1132 (10th Cir. 2006). A law enforcement officer/clergyman who resigned from a police department after the police chief allegedly rearranged his work schedule so it would conflict with his duties as a minister filed a § 1983 action against the city, police chief and city manager alleging violations of his constitutional rights to freedom of association, free exercise of religion, and substantive due process. The chief appealed a partial denial by the district court of his motion for summary judgment on the basis of qualified immunity. The appeals court affirmed in part, reversed in part, and remanded. The court held that the police chief was not entitled to qualified immunity on the officer's claim of interference with free exercise of his religion, finding that the mere refusal of the chief and police department to accommodate the officer's religious scheduling needs, without more, would not establish a constitutional violation. The officer alleged he was moved to the day shift precisely because of the chief's knowledge of his religious commitment, claiming that the transfer decision was not neutral but rather was motivated by the officer's religious commitments. The officer apparently successfully juggled his two responsibilities for eight years, but his relationship with the management of the police department soured and his schedule was changed. Forced to choose between his police and his ministerial responsibilities, he resigned from the police department and filed suit. (City of Coweta, Oklahoma)

32. PRETRIAL DETENTION

U.S. District Court
 SUICIDE

Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). The mother of a pretrial detainee who committed suicide in a holding cell brought a state court action against a city and officers, alleging deliberate indifference to the detainee's serious medical needs. The case was removed to federal court and the defendants moved for

summary judgment. The district court granted the motion. The court held that the officers were not deliberately indifferent, where the detainee did not have a particular vulnerability to suicide, given that she had not threatened or attempted suicide and that her intoxication was not per se indicative of a suicidal tendency. The court noted that there was no indication that the officers knew or should have known of any such vulnerability, given that the detainee had been detained in a holding cell on previous occasions without incident. The court held that the city was not liable for indifference based on its policies for identifying detainees at increased risk for suicide, where the city did not have a history of numerous suicides by detainees, the city had policies for removing harmful items from detainees and, following previous suicides in a holding cell, the city took corrective action by placing a video monitor in the cell. The court noted that a police department is under no Eighth Amendment duty to install a video monitoring system in an effort to prevent suicides in holding cells. (Scranton Police Department, Pennsylvania)

U.S. District Court
FALSE IMPRISONMENT

Garcia Rodriguez v. Andreu Garcia, 403 F.Supp.2d 174 (D.Puerto Rico 2005). An arrestee brought a civil rights claim alleging that he was illegally detained following his arrest on a warrant for failure to pay alimony. The district court held that the arrestee stated a claim for false imprisonment in violation of his Fourth Amendment rights. The arrestee alleged that the officers who arrested him had no authority under the arrest warrant to immediately incarcerate him, but should have caused his appearance before a judge. The arrestee was held in prison for five days until bail was paid by his relatives. (Bayamon Penitentiary, Puerto Rico)

U.S. District Court
SUICIDE

Gaston v. Ploeger, 399 F.Supp.2d 1211 (D.Kan. 2005). The estate of a county jail detainee who committed suicide in his cell sued a sheriff, county, and jail officials, seeking compensation. The defendants moved for summary judgment, which the district court granted in part and denied in part. The court held that the county commissioners did not show deliberate indifference to the detainee, where there was a failure to connect them with any of the events leading up to the suicide. The court found that summary judgment was precluded by fact issues as to whether the sheriff was liable in his individual capacity for failing to train staff regarding suicide risk. The court also found that summary judgment was precluded by fact issues regarding the liability of officers who had contact with the detainee. The detainee allegedly exhibited strong signs of suicidal tendencies of which the officials were aware, or should have been aware, and it was unclear whether the officials took steps to address the risk. The court denied qualified immunity for the officials because the law was clearly established at the time of the suicide that officials were required to act if they had knowledge of a substantial risk to jail detainees. (Brown County Jail, Kansas)

U.S. District Court
USE OF FORCE

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. Appeals Court
MEDICAL CARE

Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). A detainee brought an action against the United States Marshals Service, various county jails where he was detained, doctors in a federal prison, a private medical center, a private doctor, and others, alleging claims under § 1983 and the Federal Tort Claims Act (FTCA), and alleging negligence under state law. The district court dismissed the action and the detainee appealed. The appeals court affirmed. The court held that filing of an administrative claim with the United States Marshals Service was insufficient to satisfy the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA), for the purpose of § 1983 claims against county jails and a federal prison doctor. The court noted that administrative claims against the county jails had to be directed to those facilities, and claims alleging wrongdoing by a doctor at a federal prison had to be filed with the federal Bureau of Prisons. The court ruled that FTCA claims against county facilities were barred by the independent contractor exemption of the FTCA. According to the court, allegations did not state deliberate indifference claims against a private medical center or a private doctor with allegations that someone at a private medical center overmedicated him, and that a private doctor failed to properly diagnose the severity of his foot injury. The detainee had been arrested on federal drug and firearm charges and he was held without bail. During his pretrial detention, the United States Marshals Service lodged him in several county jail facilities with which it contracts, and he also spent time in two federal facilities. (Hillsborough County Department of Corrections, NH; Cumberland County Jail, Maine; Merrimack County House of Corrections, NH; FMC Rochester, MN; Strafford County House of Corrections, NH; FCI Raybrook, NY)

U.S. Appeals Court
SUICIDAL ATTEMPT
SUPERVISION

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 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
MEDICAL CARE

Dukes v. Georgia, 428 F.Supp.2d 1298 (N.D.Ga. 2006). A pretrial detainee brought an action against state and county defendants as well as jail personnel, alleging deliberate indifference to a serious medical need, violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and medical malpractice. The defendants filed motions for summary judgment. The court held that jail personnel did not violate the Americans with Disabilities Act (ADA) or the Rehabilitation Act when an officer and others allegedly told other inmates of the detainee's status as an HIV infected person, where the detainee did not show that such disclosure denied him the benefits of any program or service or that it discriminated against him. The court also found no ADA or Rehabilitation Act violation when an officer did not place a mask on the detainee when he was being transported to the hospital, where the failure to place a mask on the detainee did not deny him the benefits of any program or service or discriminate against him. The court noted that transportation can be construed as a "program or service provided by the public entity" for the purposes of Title II of the Americans with Disabilities Act (ADA). According to the court, even if a physician's failure to diagnose the pretrial detainee's cryptococcus was negligent or even severely negligent, her actions and treatment of the detainee did not constitute deliberate indifference to the detainee's serious medical needs in violation of due process where the detainee was receiving treatment for his symptoms and his underlying illness, HIV, and while in hindsight it appeared that a lesion shown by the x-rays was in fact cryptococcus, there was no showing that indicated that the physician was ever aware of that severe risk. The court held that a jail nurse was not deliberately indifferent to the detainee's serious medical needs in violation of the due process clause, where she responded to all requests for medical service and conveyed the requests and relevant information to a physician, and did not have substantial knowledge of a serious medical risk when she observed that the detainee was not moving about, was urinating on his mat, and was cursing at the staff. (Coweta County Jail, Georgia)

U.S. District Court
SEARCHES

Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) Arrestees brought suit, individually and on behalf of a class of others similarly situated, against a county sheriff's department, county sheriff, county undersheriff, former county undersheriff, a jail administrator and a lieutenant, challenging the constitutionality of the search policy of the county jail. The district court held that the policy, pursuant to which arrestees being admitted to a county jail were effectively subjected to strip searches, violated the Fourth Amendment and that the arrestees were entitled to permanent injunctive relief. The court found that the arrestees were the "prevailing parties" entitled to an award of attorney fees. According to the court, the Fourth Amendment precludes officials from performing strip searches and/or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest. The court held that the indiscriminate strip-searching of misdemeanor arrestees is unconstitutional. The policy required arrestees to remove their clothing in front of a corrections officer (CO) and take a shower, regardless of the nature of their crime and without any determination that there was a reasonable suspicion that they possessed contraband. The court found that the policy violated the Fourth Amendment, despite the claim that the written policy did not involve either a command for the arrestee to undress completely or a command for the CO to inspect the naked arrestee. The court noted that the procedure that was followed in fact by the COs required all admittees to remove their clothes, submit to a visual examination by the CO, and shower. The court held that the arrestees were entitled to a permanent injunction prohibiting county jail officials from conducting a strip search, as set forth in the jail's "change out" procedure. (Montgomery County Jail, New York)

U.S. District Court
MEDICAL CARE

Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). A pretrial detainee brought a pro se action against a superintendent, assistant superintendent, and physician's assistant for a county correctional facility, alleging that they were deliberately indifferent to his serious medical needs. The defendants moved for summary judgment and the district court granted the motion. The court held that the detainee administratively exhausted his claim that the superintendent and assistant superintendent were deliberately indifferent to his serious medical needs, even though he did not file a formal grievance, given that "rules" on grievance procedures in the inmate handbook did not require that the grievance take a particular form. The court noted that the detainee submitted a request form asking for referral to a specialist, as specified in the medical procedures section of handbook, and that inquiries made by an investigator for the detainee's criminal defense attorney into the facility's refusal to refer the detainee to an outside medical care provider for his shoulder pain gave the superintendent and assistant superintendent the requisite opportunity to address the detainee's complaints, which they took advantage of by explaining the decision made. The court held that the detainee failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act (PLRA), on his claim that a physician's assistant at the county correctional facility was deliberately indifferent to his serious medical needs by failing to refer him to specialist outside the facility for his shoulder injury. According to the court, the complaints made on the detainee's behalf by an investigator for the detainee's criminal defense attorney did not allege any misfeasance on the part of the physician's assistant or even mention him, and therefore did not give the facility's officials sufficient notice of the detainee's concerns about treatment received from the physician's assistant to allow those concerns to be dealt with administratively. The court found that material issues of fact existed as to whether the superintendent and assistant superintendent denied outside care to the detainee on prohibited bases, such as the detainee's ability or willingness to pay for such medical services, precluding summary judgment for the officials on the detainee's claims alleging deliberate indifference to his serious medical needs. But the court concluded that a delay in having the detainee examined by an orthopedic surgeon did not cause him any additional pain or permanent injury, given that the specialists who eventually saw the detainee did not believe that surgery was an appropriate treatment for his shoulder pain and the measures recommended did not appreciably reduce the detainee's pain and discomfort, such that implementing them earlier would not have measurably improved his condition. The court found that the detainee's injury did not amount to a "serious medical need" for alleged deliberate indifference to his serious medical needs. (Merrimack County House of Corrections, New Hampshire)

U.S. Appeals Court
CONDITIONS

Spencer v. Bouchard, 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
PROTECTION

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 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
SEARCHES

Tardiff v. Knox County, 425 F.Supp.2d 190 (D.Me.2006). A class action suit was brought against a county, its sheriff, and unidentified jail correctional personnel under § 1983, claiming that the Fourth Amendment rights of detainees alleged to have committed non-violent, non-weapons, and non-drug felonies, and detainees alleged to have committed misdemeanors, were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. Summary judgment was granted in part and denied in part to the plaintiffs, and the defendants filed a motion for reconsideration. The district court held that: (1) evidence, including booking logs at the county jail, demonstrated that corrections officers routinely strip searched misdemeanor detainees without reasonable suspicion; (2) a jail administrator's letter was highly probative of what municipal policymakers knew about ongoing strip search practices at the jail; (3) intake and release log evidence provided proof that, for at least some corrections officers, strip

searching was customary; and (4) the actions taken by the county in response to the unconstitutional practice of strip searching misdemeanor detainees amounted to acquiescence in it. According to the court, a county jail inspection report provided information about the circumstances surrounding search practices at the jail, as well as the knowledge of the county policymakers before the commencement of the class period, and, thus, was relevant in the class action suit. (Knox County Jail, Maine)

U.S. District Court
SUICIDES

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
SEARCHES
INTAKE SCREENING
MEDICAL CARE

Thompson v. County of Cook, 428 F.Supp.2d 807 (N.D.Ill. 2006). A detainee held for civil contempt brought an action against a county and a sheriff, alleging civil rights violations due to invasive search procedures. Following a jury verdict for the defendants, the detainee moved for a new trial. The district court held that a jury's verdict as to an unreasonable body cavity search was against the manifest weight of evidence. The court noted that, notwithstanding the detainee's purported intermingling with others who were incarcerated, he was not charged with any crime, and there was no evidence that deputies noticed anything suspicious about detainee which would have otherwise justified a search. The detainee was subjected to an invasive urethral swabbing procedure without his consent. The detainee had been held in civil contempt and ordered held in custody after he refused to sign certain documents related to his pending divorce proceedings. Upon arrival at the jail, the detainee was processed along with approximately 250 other new inmates. After spending some time in a holding pen, the detainee and others were photographed and given identification cards. An employee from Cermak Health Services, the agency responsible for administering medical treatment to detainees at the jail, then asked Thompson a number of medical screening questions. During the interview, the detainee responded to the questions on a standard form concerning his medical history and signed the following "consent for treatment" portion of the form: *I consent to a medical and mental health history and physical including screening for tuberculosis and sexually transmitted diseases as part of the intake process of the Cook County Jail. I also consent to ongoing medical treatment by Cermak Health Services staff for problems identified during this process. I understand I may be asked to sign forms allowing other medical treatments. I understand that every effort will be made by CHS staff to keep my medical problems confidential. I understand the policy of CHS regarding access to health care at Cook County Jail.* The defendants presented evidence at trial that during the interview, an employee informed the detainee of his right to refuse the medical screening, but the detainee denied that anyone informed him of his right to refuse to consent. Following the medical screening interview, his personal property was inventoried and then he and other inmates then underwent a urethral swabbing procedure. He claimed that he felt pain both during and after the procedure. (Cook County Jail, Illinois)

U.S. District Court
PRE-SENTENCE
DETENTION

U.S. v. Nedd, 415 F.Supp.2d 1 (D.Me. 2006). A defendant convicted of two federal firearms charges sought presentence release. The district court denied release, based on the defendant's failure to comply with the terms of his pretrial release, and his belligerence toward a pretrial services officer who indicated that he posed a danger to the community. (U.S. District Court, Maine)

U.S. Appeals Court
SEARCHES

Way v. County of Ventura, 445 F.3d 1157 (9th Cir. 2006). A female arrestee who had undergone a strip search with body cavity inspection upon booking on a misdemeanor charge of being under the influence of a controlled substance, brought § 1983 Fourth Amendment action against a county sheriff and against the deputy who had performed the search. The district court granted summary judgment for the arrestee, and

defendants appealed. The appeals court affirmed in part and reversed in part. The court held that a suspicionless strip search conducted solely on basis of the county's blanket policy for controlled-substance arrestees offended the Fourth Amendment, where the intrusiveness of the search was extreme, the county did not show any link between the policy and legitimate security concerns for persons spontaneously arrested and detained temporarily on under-the-influence charges, and the arrestee was detained only until bail was posted and never entered the jail's general population. The court held that the defendants were entitled to qualified immunity because the appellate court in the county's federal circuit had never previously addressed the constitutionality of a body cavity search policy premised on the nature of drug offenses, and had held that the nature of offense alone may sometimes provide reasonable suspicion. (Ventura County Sheriff's Department, California)

33. PRIVACY

No cases.

34. PROGRAMS-PRISONER

U.S. District Court
DRUG/ALCOHOL

Barq v. Daniels, 428 F.Supp.2d 1147 (D.Or. 2006). A federal prisoner filed a petition for a writ of habeas corpus, alleging that his removal from his originally assigned class under the Bureau of Prisons' (BOP) drug and alcohol treatment program (DAP), and subsequent placement into another class that graduated on a later date violated his constitutional rights. The district court held that it was arbitrary and capricious and an abuse of discretion for BOP to rely exclusively on the number of sessions that it forced the petitioner to miss in deciding to remove the prisoner from his original DAP class. The prisoner had been placed in a special housing unit (SHU) through no fault of his own, and he missed classes as a result. The court noted that had the prisoner been permitted to rejoin his class, as of graduation he would have completed more sessions than seventy-five percent of the other DAP participants. (FCI Sheridan, Oregon)

U.S. District Court
SEX OFFENDER

Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). A state inmate filed a petition for a writ of habeas corpus challenging a state parole board's denial of parole. The district court held that requiring the inmate to admit to the sexual crimes for which he was convicted, as a condition for completing a rehabilitation program, did not violate his Fifth Amendment right against self-incrimination, nor the inmate's substantive due process rights or the inmate's First Amendment right not to be compelled to speak. The court found that the requirement did not constitute sufficient compulsion to implicate the inmate's Fifth Amendment right against self-incrimination, even though the inmate's chance at parole was diminished if he did not successfully complete the program, where the inmate's failure to accept responsibility for his sexual behavior did not automatically preclude him from parole. (State Correctional Institution, Houtzdale, Pennsylvania)

U.S. Appeals Court
EDUCATIONAL
JUVENILES

Handberry v. Thompson, 446 F.3d 335 (2nd Cir. 2006). City prison inmates, between the ages of 16 and 21, brought a class action against city officials under § 1983 and the New York education code, alleging failure to provide adequate educational services. After the entry of a declaratory judgment in favor of the inmates, the district court entered an injunction ordering the city to comply with the terms of an educational plan and to provide additional required services to eligible inmates. The city appealed. The appeals court affirmed in part, vacated in part and remanded. The appeals court held that the Prison Litigation Reform Act (PLRA) prohibited prospective relief for violations of state law only. The court held that the injunction was a necessary and narrowly drawn means of effectuating prospective relief, as required by Prison Litigation Reform Act (PLRA), even though the court described the plaintiff class as consisting of inmates housed in one specific facility, where that was the only facility that provided educational services, and inmates at city's other jails had to transfer there to receive such services. According to the court, the special monitor appointed by the district court to oversee implementation of the order was not a "special master," and thus the requirement that the city and state pay for the special monitor did not violate the provision of Prison Litigation Reform Act (PLRA) requiring expenses for special masters to be borne by the judiciary. (New York City Department of Education, New York City Department of Corrections, Rikers Island)

U.S. District Court
PSYCHOLOGICAL
RIGHT TO TREATMENT

Price v. Wall, 428 F.Supp.2d 52 (D.R.I. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that he was intentionally transferred him to the facility where he was confined in an effort to frustrate his rehabilitation, in retaliation for his filing of a motion to compel compliance with a state court order, in violation the First Amendment. The defendants moved to dismiss. The district court held that the inmate stated a First Amendment retaliation claim where he alleged that corrections officials intentionally transferred him to the facility in retaliation for his court action. According to the court, the question was not whether the defendants had a right to transfer the inmate, but whether such action was accomplished for an unlawful

purpose. The inmate had been required, as a condition of his sentence, to complete certain rehabilitative programs, including psychological and psychiatric treatment while incarcerated. After not receiving any of the court-mandated treatment, the inmate filed a motion in the state courts seeking to compel the Department of Corrections to comply with the state court order. After several skirmishes, the Department of Corrections agreed to provide the inmate with the court-mandated treatment. The parties further agreed that if the inmate successfully completed the first round of treatment, the Department of Corrections would upgrade his classification status, permitting him to participate in further rehabilitative treatment as mandated by the state court. The inmate successfully completed his first round of treatment and appeared before a classification board for review of his classification status. Based on his successful completion of the initial round of treatment and pursuant to the agreement between the inmate and the Department, the board recommended that the inmate's classification be upgraded. But the defendants refused to permit an upgrade and instead launched no less than three separate, unrelated investigations into various matters, delaying the inmate's classification status upgrade and prohibiting him from participating in further rehabilitation. (Rhode Island Department of Corrections)

35. PROPERTY-PRISONER PERSONAL

No cases.

36. RELEASE

U.S. Appeals Court
PAROLE- CONDITIONS

Farrell v. Burke, 449 F.3d 470 (2nd Cir. 2006). A former state parolee brought a § 1983 action against parole officers, alleging that they violated his constitutional rights under the due process clause of the Fourteenth Amendment by imposing and enforcing a special condition of parole that prohibited his possession of "pornographic material." The district court granted the defendants' motion for summary judgment, and the parolee appealed. The appeals court affirmed, and held that: (1) parole officers who enforced the special condition by arresting the parolee were "personally involved" in any violation of his constitutional rights, even though neither of them had imposed the special condition; (2) the book found in the parolee's apartment, which contained sexually explicit pictures and lurid descriptions of sex between men and boys, fell within any reasonable definition of "pornography," and so the parolee had adequate notice that it was prohibited under the first prong of the as-applied vagueness challenge; (3) the special condition provided adequate standards for the parole officers to determine whether the book in question was prohibited, under the second prong of the as-applied vagueness challenge; (4) this case presented no threat of chilling constitutionally-protected conduct that might have supported a facial challenge to the vagueness of the special condition; and (5) under the circumstances, the court could not say that the special condition's overbreadth was both real and substantial in relation to its plainly legitimate sweep. (New York)

U.S. District Court
PAROLE- DUE PROCESS

Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). A state inmate filed a petition for a writ of habeas corpus challenging a state parole board's denial of parole. The district court held that requiring the inmate to admit to the sexual crimes for which he was convicted, as a condition for completing a rehabilitation program, did not violate his Fifth Amendment right against self-incrimination, nor the inmate's substantive due process rights or the inmate's First Amendment right not to be compelled to speak. The court found that the requirement did not constitute sufficient compulsion to implicate the inmate's Fifth Amendment right against self-incrimination, even though the inmate's chance at parole was diminished if he did not successfully complete the program, where the inmate's failure to accept responsibility for his sexual behavior did not automatically preclude him from parole. (State Correctional Institution, Houtzdale, Pennsylvania)

U.S. District Court
PAROLE- VIOLATION
ELECTRONIC
MONITORING

Yahweh v. U.S. Parole Com'n, 428 F.Supp.2d 1293 (S.D.Fla. 2006). A parolee brought an action against the United States Parole Commission (USPC), seeking declaratory judgment or other relief from his placement on the Home Detention Electronic Monitoring Program upon the USPC's determination that he violated his parole by submitting incomplete and untruthful information to his probation officer. USPC objected to a magistrate judge's report and recommendation that the parolee's motion for a preliminary injunction should be granted. The district court held that the USPC was within its discretion in placing the parolee on the program for violating his parole, and that a preliminary injunction was not warranted. (United States Parole Commission)

37. RELIGION

U.S. District Court
 BEARDS
 RLUIPA- Religious Land Use
 and Institutionalized
 Persons Act

Gooden v. Crain, 405 F.Supp.2d 714 (E.D.Tex. 2005). A state prisoner brought a pro se action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he should be permitted to grow a beard in accordance with his Muslim religious beliefs. The district court dismissed the case, finding that the policy that prohibited the inmate from growing a beard did not violate RLUIPA and the policy did not violate the inmate’s equal protection rights. The court noted that although the prisoner was prohibited from growing a beard, he was permitted to practice the fundamental aspects of his religious beliefs. According to the court, the policy was the least restrictive means to further the government interest in security, given the need for accurate pictures of inmates. The court found no equal protection violation even though inmates with a skin condition were allowed to have quarter inch beards, noting that the policy was applied equally to all religious groups. (Coffield Unit, Texas Board of Criminal Justice)

U.S. District Court
 OPPORTUNITY TO
 PRACTICE
 RLUIPA- Religious Land Use
 and Institutionalized
 Persons Act

Kaufman v. McCaughtry, 422 F.Supp.2d 1016 (W.D.Wis. 2006). A state prison inmate brought a § 1983 action against prison officials, challenging their refusal to permit him to organize an atheist study group. Following remand from the court of appeals, the officials moved for summary judgment. The district court held that it was not clearly established in 2002 that atheism was a “religion,” and the officials were qualifiedly immune from suit. The court noted that the Free Exercise clause and the Religious Land Use and Institutionalized Persons Act (RLUIPA) limit the government's ability to burden a prisoners' exercise of sincerely-held religious beliefs, even when governmental burdens are imposed neutrally upon believer and non-believer alike. The court noted that the courts had recognized that secular humanism and other non-theistic belief systems were protected by the Free Exercise Clause, but the inmate did not tell officials he was an adherent of any such belief system, and did not indicate that his proposed group was connected to “religious” principles. (Waupun Correctional Institution, Wisconsin)

U.S. District Court
 OPPORTUNITY TO
 PRACTICE
 RLUIPA- Religious Land Use
 and Institutionalized
 Persons Act
 RFRA- Religious Freedom
 Restoration Act

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

38. RULES & REGULATIONS-PRISONER

U.S. District Court
 BEARDS

Gooden v. Crain, 405 F.Supp.2d 714 (E.D.Tex. 2005). A state prisoner brought a pro se action against prison officials under § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), alleging that he should be permitted to grow a beard in accordance with his Muslim religious beliefs. The district court dismissed the case, finding that the policy that prohibited the inmate from growing a beard did not violate RLUIPA and the policy did not violate the inmate’s equal protection rights. The court noted that although the prisoner was prohibited from growing a beard, he was permitted to practice the fundamental aspects of his religious beliefs. According to the court, the policy was the least restrictive means to further the government interest in security, given the need for accurate pictures of inmates. The court found no equal protection violation even though inmates with a skin condition were allowed to have quarter inch beards, noting that the policy was applied equally to all religious groups. (Coffield Unit, Texas Board of Criminal Justice)

U.S. District Court
 PUBLICATIONS

Calia v. Werholtz, 426 F.Supp.2d 1210 (D.Kan. 2006). A former state prison inmate, proceeding pro se, brought a § 1983 action against corrections officials, alleging that their enforcement against him of rules restricting certain inmates' ability to subscribe to newspaper, magazine, and newsletter publications violated his First Amendment rights. The court granted summary judgment for the officials. The court held that the inmate’s claims for injunctive relief were moot and that the officials were entitled to Eleventh Amendment immunity insofar as the inmate's action sought monetary damages and was brought against the officials in

their official capacities. The court found that the officials were entitled to qualified immunity because enforcement of the rules did not violate a clearly established constitutional right. (Lansing Correctional Facility, Kansas)

U.S. District Court
PUBLICATIONS

Smith v. Miller, 423 F.Supp.2d 859 (N.D.Ind. 2006). A state inmate filed a § 1983 action challenging prison officials' decision to confiscate his anarchist materials. The officials moved for summary judgment. The district court held that fact issues remained as to whether mere possession of anarchist literature presented a clear and present danger to prison security. The court opened its opinion by stating: "The issue of anarchism has raised its ugly face again, this time in a prison context...The question here focuses on whether or not prison officials at the Indiana State Prison are authorized to confiscate anarchist materials from inmates incarcerated there... While the question presented here is a very close one, and it may be one on which the prison authorities will later prevail...there needs to be a more extensive factual record." The court noted that if a trial were to be held, the court would attempt to appoint counsel for the plaintiff and make every effort to keep the case as narrowly confined as possible. According to the court, "Although it is a close case, there is enough here, if only barely enough, to keep the courthouse doors open for this claim which necessarily involves overruling and denying the defendants' motion." (Indiana State Prison)

39. SAFETY AND SECURITY

U.S. District Court
FIRE SAFETY

Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). A deaf inmate filed an action alleging that prison officials violated his rights under the Americans with Disabilities Act (ADA), Rehabilitation Act, and a consent decree by failing to provide qualified sign language interpreters, effective visual fire alarms, use of closed-captioned television sets, and access to text telephones (TTY). Officials moved for summary judgment, which the district court granted in their favor. The court held that the officials at the high-security facility complied with the provision of a consent decree requiring them to provide visual fire alarms for hearing-impaired inmates, even if the facility was not always equipped with visual alarms, where corrections officers were responsible for unlocking each cell door and ensuring that inmates evacuate in emergency situations. The court held that the deputy supervisor for programs at the facility was not subject to civil contempt for her failure to fully comply with the provision of consent decree requiring the facility to provide access to text telephones (TTY) for hearing-impaired inmates in a manner equivalent to hearing inmates' access to telephone service, even though certain areas within the facility provided only limited access to TTY, and other areas lacked TTY altogether. The court noted that the deputy warden made diligent efforts to comply with the decree, prison staff responded to the inmate's complaints with temporary accommodations and permanent improvements, and repairs to broken equipment were made promptly. The court found that the denial of the inmate's request to purchase a thirteen-inch color television for his cell did not subject the deputy supervisor for programs to civil contempt for failing to fully comply with the provision of a consent decree requiring the facility to provide closed-captioned television for hearing-impaired inmates, despite the inmate's contention that a closed-caption decoder would not work on commissary televisions. The court noted that the facility policy barred color televisions in cells and that suppliers confirmed that there was no technological barrier to installing decoders in televisions that were available from the commissary. (Wende Correctional Facility, New York)

U.S. District Court
FIRE SAFETY

Figueroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). A state prisoner who was born deaf brought an action against a superintendent of programs at a prison, alleging failure to provide interpreters, visual fire alarms, access to text telephone, and a television with closed-captioned device in contempt of a consent order in class action in which the court entered a decree awarding declaratory relief to prohibit disability discrimination against hearing impaired prisoners by state prison officials. The superintendent moved for summary judgment and the district court granted the motion. The court held that the exhaustion requirement of Prison Litigation Reform Act (PLRA) did not apply to an action seeking exclusively to enforce a consent order. The court found that the superintendent was not in contempt of the consent order, noting that sign language interpreters were provided at educational and vocational programs and at medical and counseling appointments for hearing-impaired inmates as required by consent decree, the prison was equipped with visual fire alarms that met the requirements of the decree, and diligent efforts were being made to comply with the consent decree regarding access to text telephones. (Wende Correctional Facility, New York)

U.S. District Court
SEARCHES- CELL
PUBLICATIONS

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court found that the officials' decision to "shake down" the inmate's cell was not in retaliation for his having filed a civil rights action, and thus did not violate the inmate's First Amendment right to access courts, where shakedowns were routine, and the inmate was thought to have prohibited materials in his cell. The court also held that the officials did not violate the inmate's First Amendment free speech rights by refusing the word puzzles sent by the inmate's family through regular mail and by disallowing catalogs for magazines or books,

where there was no allegation that the inmate had been denied actual magazines or books, and word puzzles were not permitted under prison regulations. According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment. (Delaware Correctional Center)

U.S. Appeals Court
SEGREGATION
PROTECTION

Smith v. Cummings, 445 F.3d 1254 (10th Cir. 2006). A prisoner brought civil rights claims and state law claims against a former prison officer and prison officials. The district court entered judgment against the prison officer and summary judgment in favor of the other defendants. The appeals court affirmed in part and remanded in part. The court held that prison officials did not violate the Eighth Amendment by failing to clear an area through which segregated inmates passed, of all inmates from the regular population, when escorting segregated inmates to and from the protective housing unit, absent a showing of conditions posing a serious risk of harm or evidence of deliberate indifference. The court noted that no segregated inmate was ever assaulted on these occasions, other precautions were taken by the officials, and the officials acted promptly in response to the inmate's particular safety concerns once alerted. (Lansing Correctional Facility, Kansas)

40. SANITATION

No cases.

41. SEARCHES

U.S. District Court
STRIP SEARCH

Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) Arrestees brought suit, individually and on behalf of a class of others similarly situated, against a county sheriff's department, county sheriff, county undersheriff, former county undersheriff, a jail administrator and a lieutenant, challenging the constitutionality of the search policy of the county jail. The district court held that the policy, pursuant to which arrestees being admitted to a county jail were effectively subjected to strip searches, violated the Fourth Amendment and that the arrestees were entitled to permanent injunctive relief. The court found that the arrestees were the "prevailing parties" entitled to an award of attorney fees. According to the court, the Fourth Amendment precludes officials from performing strip searches and/or body cavity searches of arrestees charged with misdemeanors or other minor offenses unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband based on the crime charged, the particular characteristics of the arrestee, and/or the circumstances of the arrest. The court held that the indiscriminate strip-searching of misdemeanor arrestees is unconstitutional. The policy required arrestees to remove their clothing in front of a corrections officer (CO) and take a shower, regardless of the nature of their crime and without any determination that there was a reasonable suspicion that they possessed contraband. The court found that the policy violated the Fourth Amendment, despite the claim that the written policy did not involve either a command for the arrestee to undress completely or a command for the CO to inspect the naked arrestee. The court noted that the procedure that was followed in fact by the COs required all admittees to remove their clothes, submit to a visual examination by the CO, and shower. The court held that the arrestees were entitled to a permanent injunction prohibiting county jail officials from conducting a strip search, as set forth in the jail's "change out" procedure. (Montgomery County Jail, New York)

U.S. District Court
CELL SEARCH

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. The court found that the officials' decision to "shake down" the inmate's cell was not in retaliation for his having filed a civil rights action, and thus did not violate the inmate's First Amendment right to access courts, where shakedown were routine, and the inmate was thought to have prohibited materials in his cell. (Delaware Correctional Center)

U.S. District Court
STRIP SEARCH

Tardiff v. Knox County, 425 F.Supp.2d 190 (D.Me.2006). A class action suit was brought against a county, its sheriff, and unidentified jail correctional personnel under § 1983, claiming that the Fourth Amendment rights of detainees alleged to have committed non-violent, non-weapons, and non-drug felonies, and detainees alleged to have committed misdemeanors, were violated when they were subjected to strip searches without reasonable suspicion that they were harboring contraband on or within their bodies. Summary judgment was granted in part and denied in part to the plaintiffs, and the defendants filed a motion for reconsideration. The district court held that: (1) evidence, including booking logs at the county jail, demonstrated that corrections officers routinely strip searched misdemeanor detainees without reasonable suspicion; (2) a jail administrator's letter was highly probative of what municipal policymakers knew about ongoing strip search practices at the jail; (3) intake and release log evidence provided proof that, for at least some corrections officers, strip

searching was customary; and (4) the actions taken by the county in response to the unconstitutional practice of strip searching misdemeanor detainees amounted to acquiescence in it. According to the court, a county jail inspection report provided information about the circumstances surrounding search practices at the jail, as well as the knowledge of the county policymakers before the commencement of the class period, and, thus, was relevant in the class action suit. (Knox County Jail, Maine)

U.S. Appeals Court
 STRIP SEARCH
 BODY CAVITY SEARCH

Way v. County of Ventura, 445 F.3d 1157 (9th Cir. 2006). A female arrestee who had undergone a strip search with body cavity inspection upon booking on a misdemeanor charge of being under the influence of a controlled substance, brought § 1983 Fourth Amendment action against a county sheriff and against the deputy who had performed the search. The district court granted summary judgment for the arrestee, and defendants appealed. The appeals court affirmed in part and reversed in part. The court held that a suspicionless strip search conducted solely on basis of the county's blanket policy for controlled-substance arrestees offended the Fourth Amendment, where the intrusiveness of the search was extreme, the county did not show any link between the policy and legitimate security concerns for persons spontaneously arrested and detained temporarily on under-the-influence charges, and the arrestee was detained only until bail was posted and never entered the jail's general population. The court held that the defendants were entitled to qualified immunity because the appellate court in the county's federal circuit had never previously addressed the constitutionality of a body cavity search policy premised on the nature of drug offenses, and had held that the nature of offense alone may sometimes provide reasonable suspicion. (Ventura County Sheriff's Department, California)

42. SERVICES- PRISONER

U.S. District Court
 COMMISSARY

Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). A state inmate filed a § 1983 action alleging that prison officials violated his constitutional rights. The court granted the officials' motion for summary judgment. According to the court, the prison officials' denials of several privileges while the inmate was voluntarily housed in a security housing unit, including extra visits, reading material, exercise, television, cleaning tools, boiling water, ice, razors, and additional writing utensils, were not a sufficiently serious deprivation to support the inmate's claim that the denials constituted cruel and unusual punishment under the Eighth Amendment. The court found that the inmate had no constitutionally protected right to purchase food or other items as cheaply as possible through the prison commissary, and therefore prison officials did not violate the inmate's Eighth Amendment rights by allegedly overcharging for commissary products. (Delaware Correctional Center)

43. SENTENCE

No cases.

44. STANDARDS

No cases.

45. SUPERVISION

U.S. Appeals Court
 CELL CHECKS

Drake ex rel. Cotton v. Koss, 445 F.3d 1038 (8th Cir. 2006). The legal guardian for an incapacitated person who attempted to commit suicide while he was a pretrial detainee in a county jail, and a state department of human services sued a county and various officials in their individual and official capacities under § 1983, alleging violations of the Eighth and Fourteenth Amendments, and asserted a state law claim for negligence. The district court granted the defendants' motion for summary judgment 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)

46. TRAINING

U.S. District Court
FAILURE TO TRAIN

Stephens v. Correctional Services Corp., 428 F.Supp.2d 580 (E.D.Tex. 2006). A pretrial detainee brought an action against a private jail corporation, alleging civil rights violations and common law negligence stemming from an attack while he was incarcerated. The corporation moved for dismissal. The district court held that the corporation was not entitled to state sovereign immunity and that the corporation was potentially liable under § 1983. The court found that the detainee properly stated a negligence claim, and also a viable claim for failure to train and/or supervise. The court noted that although the establishment and maintenance of jails were “governmental functions” under state law, jail services provided by a private entity were not. The detainee alleged that the corporation had a duty to protect his well-being and to ensure his reasonable safety while incarcerated, and that the corporation breached such duty by not properly segregating him from violent inmates who threatened his life. He alleged that he informed officials of the death threats and they took no action, and that he was severely beaten by three prisoners and suffered life-threatening injuries. (Jefferson County Corrections Facility, Texas)

47. TRANSFERS

U.S. District Court
TRANSPORTATION

Dukes v. Georgia, 428 F.Supp.2d 1298 (N.D.Ga. 2006). A pretrial detainee brought an action against state and county defendants as well as jail personnel, alleging deliberate indifference to a serious medical need, violations of the Americans with Disabilities Act (ADA) and the Rehabilitation Act, and medical malpractice. The defendants filed motions for summary judgment. The court held that jail personnel did not violate the Americans with Disabilities Act (ADA) or the Rehabilitation Act when an officer and others allegedly told other inmates of the detainee's status as an HIV infected person, where the detainee did not show that such disclosure denied him the benefits of any program or service or that it discriminated against him. The court also found no ADA or Rehabilitation Act violation when an officer did not place a mask on the detainee when he was being transported to the hospital, where the failure to place a mask on the detainee did not deny him the benefits of any program or service or discriminate against him. The court noted that transportation can be construed as a “program or service provided by the public entity” for the purposes of Title II of the Americans with Disabilities Act (ADA). According to the court, even if a physician's failure to diagnose the pretrial detainee's cryptococcus was negligent or even severely negligent, her actions and treatment of the detainee did not constitute deliberate indifference to the detainee's serious medical needs in violation of due process where the detainee was receiving treatment for his symptoms and his underlying illness, HIV, and while in hindsight it appeared that a lesion shown by the x-rays was in fact cryptococcus, there was no showing that indicated that the physician was ever aware of that severe risk. The court held that a jail nurse was not deliberately indifferent to the detainee's serious medical needs in violation of the due process clause, where she responded to all requests for medical service and conveyed the requests and relevant information to a physician, and did not have substantial knowledge of a serious medical risk when she observed that the detainee was not moving about, was urinating on his mat, and was cursing at the staff. (Coweta County Jail, Georgia)

U.S. Appeals Court
RETALIATION

Morris v. Powell, 449 F.3d 682 (5th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment right to use the prison grievance system. Following denial of the defendants' first motion for summary judgment, the appeals court remanded for consideration of whether an inmate's retaliation claim must allege more than a *de minimis* adverse act. On remand, the district court granted the defendants' motion for summary judgment. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) when addressing an issue of apparent first impression for the court, prisoners bringing § 1983 retaliation claims against prison officials must allege more than an inconsequential or *de minimis* retaliatory act to establish a constitutional violation; (2) the officials' alleged actions in moving the inmate to a less desirable job within the prison did not rise to the level of an actionable retaliation; (3) the inmate's claim that he was transferred to an inferior and more dangerous prison satisfied the *de minimis* threshold; and (4) the defendants were entitled to qualified immunity on the inmate's job transfer claim. The court noted that although the inmate's official job classification was switched from the commissary to the kitchen for about six weeks, he was actually made to work in the kitchen for only a week at most, and he spent just one day in the “pot room,” which was evidently an unpleasant work station, after which he was moved to the butcher shop, about which he raised no complaints. (Telford Unit, Texas Department of Criminal Justice)

U.S. District Court
PURPOSE
RETALIATION

Price v. Wall, 428 F.Supp.2d 52 (D.R.I. 2006). An inmate brought a § 1983 suit against corrections officials, alleging that he was intentionally transferred him to the facility where he was confined in an effort to frustrate his rehabilitation, in retaliation for his filing of a motion to compel compliance with a state court order, in violation the First Amendment. The defendants moved to dismiss. The district court held that the inmate stated a First Amendment retaliation claim where he alleged that corrections officials intentionally transferred him to the facility in retaliation for his court action. According to the court, the question was not whether the defendants had a right to transfer the inmate, but whether such action was accomplished for an unlawful purpose. The inmate had been required, as a condition of his sentence, to complete certain rehabilitative programs, including psychological and psychiatric treatment while incarcerated. After not receiving any of the court-mandated treatment, the inmate filed a motion in the state courts seeking to compel the Department of Corrections to comply with the state court order. After several skirmishes, the Department of Corrections agreed to provide the inmate with the court-mandated treatment. The parties further agreed that if the inmate successfully completed the first round of treatment, the Department of Corrections would upgrade his classification status, permitting him to participate in further rehabilitative treatment as mandated by the state court. The inmate successfully completed his first round of treatment and appeared before a classification board for review of his classification status. Based on his successful completion of the initial round of treatment and pursuant to the agreement between the inmate and the Department, the board recommended that the inmate’s classification be upgraded. But the defendants refused to permit an upgrade and instead launched no less than three separate, unrelated investigations into various matters, delaying the inmate’s classification status upgrade and prohibiting him from participating in further rehabilitation. (Rhode Island Department of Corrections)

48. USE OF FORCE

U.S. District Court
EXCESSIVE FORCE
RESTRAINING CHAIR

Johnson v. Wright, 423 F.Supp.2d 1242 (M.D.Ala. 2005). An arrestee sued an arresting officer, a volunteer riding with the officer, and county jail officers, claiming violation of his Fourth Amendment protections against false arrest and excessive force. The officer, volunteer and jail officers moved for summary judgment. The district court held that the jail officers were not entitled to qualified immunity due to material issues of fact, as to whether the jail officers beat the arrestee without provocation while he was in his cell. According to the arrestee, officers dragged him out of his cell and put him in some type of harness chair, and he was in handcuffs during the entire time he was being beaten at the jail and he was still in handcuffs when he was strapped into the harness chair. The arrestee alleged that officers continued to beat him after he was strapped into the harness chair. (Chilton County Jail, Alabama)

49. VISITING

No cases.

50. WORK- PRISONER

U.S. Appeals Court
TRANSFER
REMOVAL FROM JOB

Morris v. Powell, 449 F.3d 682 (5th Cir. 2006). An inmate brought a § 1983 action against prison officials, alleging that they retaliated against him for exercising his First Amendment right to use the prison grievance system. Following denial of the defendants’ first motion for summary judgment, the appeals court remanded for consideration of whether an inmate’s retaliation claim must allege more than a *de minimis* adverse act. On remand, the district court granted the defendants’ motion for summary judgment. The inmate appealed. The appeals court affirmed in part, vacated in part, and remanded. The court held that: (1) when addressing an issue of apparent first impression for the court, prisoners bringing § 1983 retaliation claims against prison officials must allege more than an inconsequential or *de minimis* retaliatory act to establish a constitutional violation; (2) the officials’ alleged actions in moving the inmate to a less desirable job within the prison did not rise to the level of an actionable retaliation; (3) the inmate’s claim that he was transferred to an inferior and more dangerous prison satisfied the *de minimis* threshold; and (4) the defendants were entitled to qualified immunity on the inmate’s job transfer claim. The court noted that although the inmate’s official job classification was switched from the commissary to the kitchen for about six weeks, he was actually made to work in the kitchen for only a week at most, and he spent just one day in the “pot room,” which was evidently an unpleasant work station, after which he was moved to the butcher shop, about which he raised no complaints. (Telford Unit, Texas Department of Criminal Justice)

Table of Cases

Acosta v. U.S. Marshals Service, 445 F.3d 509 (1st Cir. 2006). 1, 27, 29, 32
Adem v. Bush, 425 F.Supp.2d 7 (D.D.C. 2006). 1, 7, 22
Almond v. Westchester County Dept. of Corrections, 425 F.Supp.2d 394 (S.D.N.Y. 2006). 31
Ammons v. Lemke, 426 F.Supp.2d 866 (W.D.Wis. 2006). 29
Arce v. O'Connell, 427 F.Supp.2d 435 (S.D.N.Y. 2006). 7, 9, 29
Barq v. Daniels, 428 F.Supp.2d 1147 (D.Or. 2006). 22, 34
Borello v. Allison, 446 F.3d 742 (7th Cir. 2006). 14
Burke-Fowler v. Orange County, Fla., 447 F.3d 1319 (11th Cir. 2006). 31
Calia v. Werholtz, 426 F.Supp.2d 1210 (D.Kan. 2006). 19, 38
Cruise v. Marino, 404 F.Supp.2d 656 (M.D.Pa. 2005). 14, 17, 29, 32
Davis v. Wisconsin Dept. of Corrections, 445 F.3d 971 (7th Cir. 2006). 31
Doe v. Pataki, 427 F.Supp.2d 398 (S.D.N.Y. 2006.) 7, 13
Drake ex rel. Cotton v. Koss, 445 F.3d 1038 (8th Cir. 2006). 14, 32, 45
Dukes v. Georgia, 428 F.Supp.2d 1298 (N.D.Ga. 2006). 29, 32, 47
Duquin v. Dean, 423 F.Supp.2d 411 (S.D.N.Y. 2006). 7, 9, 29, 39
Evans v. Vare, 402 F.Supp.2d 1188 (D.Nev. 2005). 1, 19, 28
Farrell v. Burke, 449 F.3d 470 (2nd Cir. 2006). 36
Figg v. Russell, 433 F.3d 593 (8th Cir. 2006). 16
Figuroa v. Dean, 425 F.Supp.2d 448 (S.D.N.Y. 2006). 1, 7, 9, 29, 39
Fleming v. LeFevere, 423 F.Supp.2d 1064 (C.D.Cal. 2006). 29
Fogle v. Pierson, 435 F.3d 1252 (10th Cir. 2006). 3, 9, 10, 12
Folk v. Atty. Gen. of Commonwealth of Pa., 425 F.Supp.2d 663 (W.D.Pa. 2006). 7, 22, 34, 36
Garcia Rodriguez v. Andreu Garcia, 403 F.Supp.2d 174 (D.Puerto Rico 2005). 16, 32
Gaston v. Ploeger, 399 F.Supp.2d 1211 (D.Kan. 2005). 14, 32
Ginest v. Board of County Com'rs of Carbon County, 423 F.Supp.2d 1237 (W.D.Wyo. 2006). 5, 27
Gooden v. Crain, 405 F.Supp.2d 714 (E.D.Tex. 2005). 37, 38
Grossman v. Bruce, 447 F.3d 801 (10th Cir. 2006). 11, 22
Handberry v. Thompson, 446 F.3d 335 (2nd Cir. 2006). 26, 27, 34
Hayden v. Pataki, 449 F.3d 305 (2nd Cir. 2006). 7, 19
Henderson v. New York, 423 F.Supp.2d 129 (S.D.N.Y. 2006). 31
Johnson v. Doughty, 433 F.3d 1001 (7th Cir. 2006). 29
Johnson v. Goord, 445 F.3d 532 (2nd Cir. 2006). 3, 28
Johnson v. Snyder, 444 F.3d 579 (7th Cir. 2006). 29
Johnson v. Wright, 423 F.Supp.2d 1242 (M.D.Ala. 2005). 14, 32, 48
Kaufman v. McCaughtry, 422 F.Supp.2d 1016 (W.D.Wis. 2006). 24, 37
MacLeod v. Kern, 424 F.Supp.2d 260 (D.Mass. 2006). 29
Marriott v. County of Montgomery, 426 F.Supp.2d 1 (N.D.N.Y. 2006.) 5, 25, 32, 41

Marshall v. Knight, 445 F.3d 965 (7th Cir. 2006). 1
Martinez v. Garden, 430 F.3d 1302 (10th Cir. 2005). 29
Morris v. Powell, 449 F.3d 682 (5th Cir. 2006). 21, 47, 50
Muntaqim v. Coombe, 449 F.3d 371 (2nd Cir. 2006). 7, 19
North River Ins. Co. v. Broward County Sheriff's Office, 428 F.Supp.2d 1284 (S.D.Fla. 2006). 16, 27
Pepper v. Carroll, 423 F.Supp.2d 442 (D.Del. 2006). 1, 2, 3, 10, 19, 39, 41, 42
Price v. Wall, 428 F.Supp.2d 52 (D.R.I. 2006). 1, 34, 47
Rand v. Simonds, 422 F.Supp.2d 318 (D.N.H. 2006). 1, 21, 29, 32
Sample v. Lappin, 424 F.Supp.2d 187 (D.D.C. 2006). 1, 37
Shrum v. City of Coweta, Okla., 449 F.3d 1132 (10th Cir. 2006). 31
Smith v. Cummings, 445 F.3d 1254 (10th Cir. 2006). 14, 39
Smith v. Miller, 423 F.Supp.2d 859 (N.D.Ind. 2006). 19, 38
Spencer v. Bouchard, 449 F.3d 721 (6th Cir. 2006). 9, 32
Stephens v. Correctional Services Corp., 428 F.Supp.2d 580 (E.D.Tex. 2006). 14, 27, 32, 46
Strong v. Woodford, 428 F.Supp.2d 1082 (C.D.Cal. 2006). 1, 28
Tardiff v. Knox County, 425 F.Supp.2d 190 (D.Me.2006). 25, 32, 31
Taylor v. Wausau Underwriters Ins. Co., 423 F.Supp.2d 882 (E.D.Wis. 2006). 14, 32
Thiel v. Nelson, 422 F.Supp.2d 1024 (W.D.Wis. 2006). 7, 10
Thomas v. Bruce, 428 F.Supp.2d 1161(D.Kan. 2006). 29
Thomas v. St. Louis Bd. of Police Com'rs, 447 F.3d 1082 (8th Cir. 2006). 24
Thompson v. County of Cook, 428 F.Supp.2d 807 (N.D.Ill. 2006). 25, 29, 32
U.S. v. Nedd, 415 F.Supp.2d 1 (D.Me. 2006). 32
Way v. County of Ventura, 445 F.3d 1157 (9th Cir. 2006). 17, 32, 41
Wills v. Terhune, 404 F.Supp.2d 1226 (E.D.Cal. 2005). 9, 10
Yahweh v. U.S. Parole Com'n, 428 F.Supp.2d 1293 (S.D.Fla. 2006). 36

Detention and Corrections Caselaw Quarterly

Published in January, April, July and October by:

CRS, Inc. in association with the American Jail Association

925 Johnson Drive, Gettysburg, PA 17325

(717) 338-9100 fax (717) 549-3419 Internet: www.correction.org

Annual subscription (4 issues).....\$78.

Rod Miller and Donald J. Walter, *Editors*

All Rights Reserved

ORDER FORM (revised 11/1/2006)

<i>Return To:</i>	CRS, INC. (717) 338-9100 FAX (717) 549-3419	925 JOHNSON DRIVE	GETTYSBURG, PA 17325 Fed. I.D. #38-1988770
-------------------	---	--------------------------	---

SHIP TO: _____

PURCHASE
ORDER # _____

Cust. # _____
(from mailing label)

BILL TO: (if different than Ship To) _____

Number Ordered	You may also ORDER ON-LINE at www.correction.org	Unit Price	Total Cost
	Detention and Corrections Caselaw Catalog , 18th Edit. 2006 * Library Edition (4 binders w/ tab dividers) \$190.00 * Unbound Edition (no tabs, no binders) \$130.00	\$190.00 \$130.00	
	18h Edition Caselaw Catalog SUPPLEMENT Brings a Seventeenth Edition Catalog up to an 18th Edition. INCLUDES a binder. Order <u>only</u> if you have an 17th Edition (2005) Caselaw Catalog	\$ 76.00	
	18th Edition Caselaw Catalog 2-YEAR SUPPLEMENT Brings a 16th Edition Catalog up to an 18th Edition. Provides a combined copy of the Supplements for the past two years. Order <u>only</u> if you have a 16 th Edition (2004) Caselaw Catalog	\$ 85.00	
	18th Edition Caselaw Catalog 3-Year SUPPLEMENT Brings a 15th Edition Catalog up to an 18th Edition. Order <u>only</u> if you have a 15th Edition (2003) Caselaw Catalog	\$ 90.00	
	18th Edition Caselaw Catalog 4-Year SUPPLEMENT Brings a 14th Edition Catalog up to an 18th Edition. Order <u>only</u> if you have a 14th Edition (2002) Caselaw Catalog	\$95.00	
	18th Edition Caselaw Catalog 5-Year SUPPLEMENT Brings a 13th Edition Catalog up to an 18th Edition. Order <u>only</u> if you have a 13th Edition (2001) Caselaw Catalog	\$95.00	
	18th Edition Caselaw Catalog SPECIAL SUPPLEMENT Brings a 12th Edition Catalog-- or earlier edition-- up to a 18th Edition. Order <u>only</u> if you have a 12th (2000) or earlier edition.	\$120.00	
	EXTRA Binders for the Caselaw Catalog 2-inch binder	\$12/one \$20/two \$28/three	
	Detention Reporter , a monthly newsletter for detention and Corrections. One Year (12 issues)..... \$48.00	\$48.00	
	CORRECTIONS CASELAW QUARTERLY. Receive new court case summaries every 3 months! Presents newly-published cases in the same format as they will appear in the <u>Catalog</u> --but months sooner. Can serve as an "interim supplement" or as a stand-alone resource. Over 300 cases summarized every year. One year (four issues)..... \$78.00	\$ 78.00	
	TOTAL	=====	

Major credit cards (VISA, MasterCard) accepted, please use our web site (www.correction.org)

Shipping Policy: All prices include shipping (UPS ground) and handling.