

LAW ENFORCEMENT LIABILITY LAW UPDATE

by Don Hays

FIRST QUARTER - 2008

(New cases in this issue are in **Bold**)

In the United States Supreme Court:

1. **Los Angeles County v. Rettele, 127 S. Ct. 1989, (U. S. Sup. Ct., No. 06-605, May 21, 2007)** Deputies of the Los Angeles County Sheriff's Department were investigating a fraud and identity theft ring. They obtained a warrant to search a house where they believed that four African-American suspects were living. One of the suspects had a handgun registered in his name. However, the deputies were unaware that the suspects they were seeking had moved out of the house three months earlier. The deputies executed their warrant and entered a bedroom of the house with their guns drawn. In that room they found two Caucasians in bed. The deputies ordered the suspects to show their hands and get out of bed. The suspects protested that they were not wearing any clothes. In response to the demands of the deputies, both suspects climbed out of bed. When they attempted to cover themselves, the deputies stopped them. After one or two minutes, the suspects were permitted to dress. They then left their bedroom and sat on a couch in their living room. By that time the deputies realized that they had made a mistake. They apologized to the residents of the house, thanked them for becoming upset, and left within five minutes. The residents of the house filed suit against the deputies and many other parties claiming that they were unreasonably detained and searched by the deputies. **ISSUE:** Did the deputies have qualified immunity from liability? **ANSWER:** Yes. The deputies acted reasonably under these circumstances.

2. **Scott v. Harris, 127 S. Ct. 1769, (U. S. Sup. Ct., No. 05-1631, April 30, 2007)** The defendant in his case, a deputy sheriff, was involved in a high-speed chase. In order to terminate that chase he applied his push bumper to the rear of the car he was chasing. This action caused the car to leave the road and crash. The driver of that car was severely injured. He was rendered a quadriplegic. **ISSUE:** Did the deputy use excessive force during his attempt to stop the suspect? **ANSWER:** No. After taking into consideration all of the circumstances surrounding this case and the danger the suspect was creating by his attempts to allude the police, the actions of this deputy were reasonable and proper and did not constitute the use of excessive force.

3. **Wallace v. Kato et al., 127 S. Ct. 1091, (U. S. Sup. Ct., No. 05-1240, February 21, 2007)** In 1994, the plaintiff in this case was arrested for murder in Chicago. He was tried and convicted of that offense. However, the charges against the defendant were ultimately dropped in April of 2002. In April of 2003 he filed a Section 1983 action against the City of Chicago and several police officers, seeking damages for, among other things, his unlawful arrest in violation of the Fourth Amendment. The Federal District Court granted the defendants' motion for summary judgment and the Seventh Circuit Court of Appeals affirmed, ruling that the suit was time barred because the plaintiff's cause of action accrued at the time of his arrest, not when his conviction was later set aside. **ISSUE:** When does a plaintiff's wrongful arrest cause of action accrue? **ANSWER:** The statute of limitations upon a Section 1983 claim seeking damages for false arrest in violation of the Fourth Amendment, where the arrest is followed by criminal proceedings, begins to run at the claimant becomes detained pursuant to legal process.

4. Garcetti et. al. v. Ceballos, 126 S. Ct. 1951, (U. S. Sup. Ct., No. 04-473, May 30, 2006)

The plaintiff in this case was a supervising deputy district attorney. He believed that the police in a case he was watching had made some “serious misrepresentations.” In support of this belief, he wrote a memorandum to his supervisors stating his concerns and advocating the dismissal of various pending charges. At a hearing in that case, the plaintiff stated his concerns in open court. The case proceeded to trial notwithstanding the plaintiff’s objections and, thereafter, at least according to the plaintiff, he was “retaliated against” by his supervisors in violation of his First and Fourteenth Amendment rights. The plaintiff brought a Section 1983 action and the Federal District Court granted summary judgment for the defendants. The Federal Court of Appeals reversed and ruled that the allegations of the Plaintiff were protected speech. **ISSUE:** Did this plaintiff have a constitutional right to speak out as he did? **ANSWER:** No. The Supreme Court ruled that when public employees make statements pursuant to their official duties, they are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.

5. Town of Castle Rock v. Gonzales, 125 S. Ct. 2796, (U. S. Sup. Ct., No. 04-278, June 27, 2005)

The plaintiff in this case called the police and informed them that the her estranged husband had taken their three children in violation of a court issued restraining order. The police did little or nothing about this complaint. Eventually, the husband pulled up in front of the local police station, pulled out a handgun and opened fire. The police returned fire and killed the husband. Inside of the husband’s truck the police discovered the bodies of the plaintiff’s three children. They had been murdered by their father. Based upon their lack of effort in enforcing the restraining order, the plaintiff brought a section 1983 action and argued that the conduct of the police denied the plaintiff due process. The Federal District Court granted the City’s motion to dismiss, but the Federal Court of Appeals reversed. **ISSUE:** Did the mother of the murdered children have a property interest in the police enforcement of her restraining order against her husband. **ANSWER:** No. For purposes of the Due Process Clause of the United State’s Constitution, the plaintiff did not have any such property interest that would support a section 1983 action.

6. Muehler et al., v. Mena, 125 S. Ct. 1495, (U. S. Sup. Ct., No. 03-1423, March 22, 2005)

FACTS: The police obtained a search warrant to search a house for deadly weapons and evidence of gang activity. The plaintiff in this case was an occupant of a house the police wanted to search. During their search of the plaintiff’s house, the police placed her in handcuffs and sat her down to wait. While the police conducted their search, a police officer and an INS agent questioned the plaintiff about her immigration status. At the conclusion of their search (about 2 or 3 hours later), the plaintiff was released from custody. **ISSUE:** Was the plaintiff’s constitutional rights violated when she was placed in handcuffs during the search of the house she occupied? **ANSWER:** No. The interests of the police in their safety during their legal search outweighed any interest the plaintiff possessed. **ISSUE:** Did the police violate the plaintiff’s constitutional rights when they questioned the plaintiff during her detention? **ANSWER:** No. Mere police questioning does not constitute a seizure. The police did not need an independent reasonable suspicion to justify their questioning of the plaintiff.

7. Devenpeck et al. v. Alford, 125 S. Ct. 588, (U. S. Sup. Ct., No. 03-710, December 13, 2004)

FACTS: Believing that the defendant was impersonating a police officer, a local officer pulled the defendant’s car over. While questioning the defendant, the officer noticed that the suspect was taping their conversation. Believing that this conduct violated the Privacy Act of that State, the officer placed the defendant under arrest. After determining that the defendant’s conduct did not, in fact, violate the Privacy

Act, the charges against him were dropped. The defendant then brought a 1983 action against everybody. The trial court denied the defendant officer qualified immunity but the jury found in his favor anyway. The Federal Court of Appeals reversed and ruled that the officer could not have had probable cause to arrest the defendant on the impersonating an officer charge because that charge was not “closely related” to the offense invoked by the officer, a Privacy Act violation. **ISSUE:** Did the Court of Appeals correctly invoke this “closely related” doctrine concerning probable cause? **ANSWER:** No. So long as probable cause to arrest exists, the arrest of the suspect was reasonable. The actual offense articulated by the arresting officer was irrelevant.

8. Brosseau v. Haugen, 125 S. Ct. 596 (U. S. Sup., No. 03-710, December 13, 2004) FACTS: A police officer was attempting to execute a warrant for the defendant’s arrest. The defendant decided not to cooperate. He attempted to hop into his car and drive away. In order to stop the defendant, the arresting officer shot him. The defendant turned around and brought a 1983 action against the officer alleging that she used excessive force under the circumstances of this case. **ISSUE:** Was this officer entitled to qualified immunity from the defendant’s suit? **ANSWER:** Yes. First, the arresting officer may have violated the defendant’s right to be free from the excessive use of force by that officer. However, that right was not “clearly established” under the facts of this case.

9. City of San Diego v. John Roe, 125 S. Ct. 521, (U. S. Sup., No. 03-710, December 13, 2004) FACTS: Roe was a police officer who, in his spare time created a video showing him stripping off his police uniform and engaging in a sex act. This video was marketed on eBay. Additionally, he sold “custom videos”; San Diego Police Department uniforms; and other items, such as men’s underwear. When Roe’s supervisor at the police department discovered Roe’s second job Roe was fired. He then brought a 1983 action against San Diego alleging a violation of his First Amendment right to free speech. The district court granted summary judgment for the City but the Court of Appeals reversed and ruled that the conduct of Roe fell within the protected category of “citizen commentary on matters of public concern.” **ISSUE:** Did the Court of Appeals err in making its ruling? **ANSWER:** Yes. The “speech” of Roe was detrimental to the mission and function of the police department and there was no basis for finding that it was the concern of the community as the Supreme Court had defined that term.

10. Groh v. Ramirez, 540 U. S. 551, (U. S. Sup., No. 02-0811, February 24, 2004) An ATF agent decided to raid a Montana ranch to look for weapons, explosives, and records. He completed a detailed affidavit in support of a request for a search warrant that explained exactly what the feds would be looking for. Unfortunately, the agent failed to include within the warrant itself any explanation of what they would be looking for. The warrant stated where they wanted to search but it did not even mention what they would be looking for. Additionally, the warrant did not mention the affidavit and clearly did not incorporate it by reference. For some reason the Federal Magistrate signed the warrant and it was executed. **ISSUE:** Was the defendant’s Fourth Amendment rights violated by the execution of this warrant. **ANSWER:** Absolutely. **ISSUE:** Were the federal agents entitled to qualified immunity from liability for this violation. **ANSWER:** Not the lead agent. He was the leader of the search and it was clear that he did not read the warrant in order to determine that it was valid on its face.

11. **Chavez v. Martinez**, 538 U. S. 760, 155 L. Ed. 984, 123 S. Ct. 1994 (U. S. Sup. Ct., No. 01-1444, May 27, 2003) A 1983 plaintiff's Fifth Amendment rights were not violated by illegal police questioning where the plaintiff was never charged and no statements were ever used against him. Furthermore, police questioning of the plaintiff while he was being treated for gunshot wounds suffered during an altercation with the police did not violate the plaintiff's Fourteenth Amendment rights.

12. **Hope v. Pelzer**, 536 U. S. 730, 153 L. Ed 2d 666, 122 S. Ct. 2508 (2002) Alabama prison guards were not entitled to qualified immunity from an inmates claim that he was subjected to cruel and unusual punishment in violation of the Eight Amendment when he was handcuffed to a hitching post, in light of binding Eleventh Circuit precedent, an Alabama Department of Corrections regulation, and a Department of Justice report informing the Department of constitutional infirmity in its use of the hitching post punishment.

13. **Saucier v. Katz**, 533 U. S. 194, 150 L. Ed. 2d 272, 121 S. Ct. 2151 (2001) A military police officer who arrested a demonstrator at a public event where the Vice President of the United States was speaking and who allegedly shoved the demonstrator into a van, after the demonstrator attempted to unfurl a banner and place it on the barrier separating the public from the area designated for speakers, was entitled to qualified immunity from excessive force suit. A reasonable officer could have believed that hurrying the demonstrator away from the scene was within the bounds of appropriate police responses.

In the Illinois Supreme Court

1. **DeSmet v. County of Rock Island**, 219 Ill. 2d 497 (Ill. Sup. Ct., No. 100261, April 20, 2006) On April 5, 2002, Doris Hays was driving her car on Illinois Route 150 in rural Rock Island County when it suddenly left the road and ran into a ditch. A passing motorist witnessed the accident and, using her cell phone, reported her observation to the village clerk of Orion. That clerk telephoned the Henry County Sheriff's office and reported that a citizen had seen a car go off Route 150 at a high rate of speed. The Henry County dispatcher called the dispatcher from the City of East Moline and reported a "vehicle in the ditch" off of Route 150. The East Moline dispatcher called the Rock Island County Sheriff's dispatcher and reported a vehicle in a ditch near the Rock Island County line. The Rock Island dispatcher said they would check on the car. They never did. The family of Doris Hays reported her missing. Three days later her car was discovered in the ditch just where the original citizen said it would be and the body of Doris Hays was found lying outside of her car at the scene of the accident. Thereafter, a 24-count wrongful death complaint was filed in circuit court naming numerous persons as defendants. On a motion by the defendants, the trial court dismissed the complaint after finding that all of the defendants were absolutely immune from liability under the Illinois Tort Immunity Act. The appellate court affirmed and the plaintiffs then brought this appeal before the Illinois Supreme Court. **ISSUE** Were the defendant's liable for their conduct in this case? **ANSWER:** No.

2. **Moore v. Green et al.**, 302 Ill. Dec. 451, (Ill. Sup. Ct, No. 100029, April 20, 2006) The police were called to the scene of a domestic dispute where the wife had called 911 and informed the police that her husband, who had an outstanding order-of-protection issued against him, was in her house and threatening her. According to various witnesses, the police arrived on the scene, but left shortly thereafter

without investigating or assisting the wife. Five minutes later the husband shot his wife to death. A Section 1983 action was thereafter filed wherein the wife's estate asserted wrongful death and survival actions. The defendants moved to dismiss, claiming absolute immunity for failing to make an arrest. The trial court denied this motion, but certified the question of whether the defendant's were absolutely immune from liability to the appellate court. The appellate court ruled that the deputies were not immune from liability. The defendants then brought this appeal before the Illinois Supreme Court. **ISSUE:** Does the Illinois Tort Immunity Act immunize the defendant's in this case from liability where they failed to take action to assist the victim? **ANSWER:** No, it does not. According to the Supreme Court, the Illinois Domestic Violence Act controls and it provides that the defendants may, in fact, be liable if their conduct constituted willful and wanton acts or omissions.

3. **Ferguson v. City of Chicago, 213 Ill. 2nd 94, 820 N. E. 2d 455, 289 Ill. Dec. 679 (Ill. Sup. Ct., No. 97218, November 5, 2004)** **FACTS:** The plaintiff in this case saw an ambulance drive the wrong way down a one-way street and strike another car. The police were called and when it appeared that the police were believing the story of the ambulance driver, the defendant attempted to tell them what he saw. The police told the defendant to return to his property. He did. When the police did not seem to be interested in what the defendant saw, he again attempted to tell them. This time the defendant was placed under arrest and charged with numerous misdemeanor counts. Eventually, on August 25, 2000, all charges against the defendant were dismissed with leave to reinstate. On January 29, 2002, the defendant filed a malicious prosecution suit against the City. The City moved to dismiss based upon the defendant's failure to file his action within the one-year statute of limitations found in Tort Immunity Act. The trial court agreed with the City and ruled that such a suit must be filed within one year of the date the criminal action against the defendant was terminated in the plaintiff's favor. In the opinion of the trial court, that date was August 25, 2000, the date the defendant's charges were dismissed. On appeal, the defendant argued that the date should be kicked back 160 days to include the time in which the defendant's charges could have been reinstated. The appellate court rejected the defendant's argument and affirmed the dismissal of his claim. This case was then brought before the Supreme Court. **ISSUE:** Was the appellate court correct when it dismissed the plaintiff's claim? **ANSWER:** No. According to the Supreme Court, the statute of limitations had not yet run when the plaintiff filed his claim. Therefore, no ground existed to support the dismissal of the plaintiff's claim.

4. **Carver v. The Sheriff of La Salle County, 203 Ill. 2d 497, 787 N. E. 2d 127, 272 Ill. Dec. 312 (Ill. Sup. Ct., No. 91108, February 8, 2003)** In federal court, the plaintiffs in this case were ex-employees of the La Salle County Sheriff's Office. In 1994 they filed suit against La Salle County and others claiming sexual harassment, sex discrimination, deprivation of equal protection, and retaliation, in violation of title VII of the Civil Rights Act of 1964 and section 1983 of title 42 of the United States Code. Eventually, the Sheriff, in his official capacity as La Salle County Sheriff, agreed to a settlement. A question of law was certified to the Illinois Supreme Court. That question was: Could the County of La Salle be required to pay judgments entered against a Sheriff's office while that office was acting in an official capacity. The Supreme Court concluded that a Sheriff, in his or her official capacity has the authority to settle and compromise claims brought the Sheriff's office. As a consequence of that settlement or compromise, the County would therefore be required to pay such judgment. This conclusion was found not to have been affected by whether the case was settled or litigated.

In the Illinois Appellate Courts:

2007 CASES

1. **Williams v. City of Evanston**, ___ Ill. Dec. ___, (1st Dist., No. 1-06-3392, December 28, 2007) The defendant, an Evanston firefighter/EMT was driving an ambulance when it collided with a vehicle driven by Williams. Williams and his passenger were injured and they sued defendant and the City and argued that the negligent driving of the defendant caused the accident and their injuries. **ISSUE:** Was the defendant and the City liable for injures allegedly caused by the negligence of the defendant? **ANSWER:** Under the Tort Immunity Act, the defendant (and thus the City) was immune from liability for mere negligence because the defendant was public employee engaged in the execution of his duties.

2. **Hudson v. City of Chicago**, ___ Ill. Dec. ___, (1st Dist., No. 1-05-2822, December 14, 2007) On the day in question the defendant, a police officer, heard a radio broadcast that a pursuit was in progress. The defendant, without being ordered to do so and in seeming violation of agency policy, decided to drive in the direction of the pursuit. She wanted to be available in case the officers who were involved in the pursued needed assistance. On the way to the location of the pursuit, the defendant was involved in an accident. The plaintiff in this case was injured as a result of that accident and recovered in excess of \$17.5 million after a jury trial. **ISSUE:** Was the defendant (and the City) immune from liability as a result of the alleged negligence of the defendant that caused the accident? **ANSWER:** No. The officer here was not engaged in the execution or enforcement of the law when she was involved in her accident. Therefore, under the Tort Immunity Act, she was not immune from liability for mere negligence.

3. **Boyd v. City of Chicago**, ___ Ill. Dec. ___, (1st Dist., No. 1-06-0358, December 5, 2007) The defendant, an off-duty police officer, was standing outside of a bar early in the morning when he was jumped by six men. One of those men, the plaintiff in this case, knocked the defendant to the ground and then drew a gun. The defendant drew his gun and shot the plaintiff in the leg. When the men ran away, the defendant reported this incident to the police and they arrested the plaintiff. He was charged with simple battery and his case was dismissed after the defendant failed to show up for a court hearing. The plaintiff then sued the City for battery, false arrest, and malicious prosecution. **ISSUE:** Was the City liable? **ANSWER:** 1. Battery? No, self defense is a defense for civil liability. 2. False Arrest? No, the police had probable cause to arrest the plaintiff. 3. Malicious Prosecution? No. The plaintiff could not prove that the underlying criminal charges were decided in his favor.

4. **Shuttlesworth v. City of Chicago**, ___ Ill. Dec. ___, (1st Dist., No. 1-06-3433, November 5, 2007) The police were involved in a high speed chase. The car the police were chasing crashed into a car occupied by the plaintiffs in this case. The plaintiffs sued the police and the City for their injuries. **ISSUE:** Were the police (and the City) liable for the plaintiff's injuries? **ANSWER:** No. The plaintiffs could not prove that the actions of the officers constituted willful and wanton conduct.

5. **Luss v. Village of Forest Park**, ___ Ill. Dec. ___, (1st Dist., No. 1-06-0731, November 5, 2007) The security agents of a local department store detained a man for shoplifting. During their struggle with this man, the agents sprayed him with mace. The police were called and they transported the man to jail. Because the man was combative (and HIV positive), the officers, in violation of their own internal rules, did not take the defendant's belt from him. Two hours later the

man hanged himself with his belt. **ISSUES:** 1. Were the police liable for failing to prevent the man's suicide attempt? **ANSWER:** No, the suicide attempt was not foreseeable. 2. Were the police liable for failing to take reasonable steps to assist the man after he was found hanging? **ANSWER:** No, the plaintiff could not prove that the man might have been saved had the police acted quicker or if they had used other means to help the man.

2006 CASES

1. **White v. City of Chicago, 308 Ill. Dec. 518, (1st Dist., No. 1-05-2536, December 29, 2006)** In May of 2003, the plaintiff was acquitted of first degree murder charges after spending five years in jail. He then filed suit against various defendants, including the Cook County State's Attorney and one of his Assistants. The plaintiff alleged that they had concealed information that would have exonerated the plaintiff. The trial court granted the defendant's motions to dismiss. **ISSUE:** Was the plaintiff's action properly dismissed? **ANSWER:** Yes. The State's Attorney and his Assistant had absolute immunity from liability.

2. **Kim v. City of Chicago, 306 Ill. Dec. 772, (1st Dist., No. 1-05-2684, November 9, 2006)** The plaintiff in this case allegedly kicked his girlfriend in the stomach. As a result of this kick, the unborn baby the girlfriend was carrying died shortly after birth. The plaintiff was arrested and charged with numerous offenses, including first degree murder. Thereafter, the girlfriend recanted her story and all charges against the plaintiff were dismissed. The plaintiff then filed a malicious prosecution action against various defendants, including the arresting officers. The trial court granted the defendants summary judgment. **ISSUE:** Was the action of the plaintiff properly dismissed? **ANSWER:** Yes. The trial court correctly ruled that the police had acted properly under the circumstances of this case. This is an excellent example of thorough police work protecting the police from liability.

3. **Sparks v. Starks, 305 Ill. Dec. 770, (1st Dist., No. 1-05-2145, September 27, 2006)** The plaintiff in this case was a Chicago police officer who was investigated by the Internal Affairs Division of the Chicago Police Department. Several charges were brought against the plaintiff, including failing to take action on felonies he witnessed. As a result of this investigation, the plaintiff was suspended without pay and the Chicago Police Board initiated proceedings against him seeking his dismissal. The proceedings against the plaintiff were concluded in his favor and he then filed a malicious prosecution action against several Internal Affairs Division officers and the City of Chicago. Because the plaintiff could not establish special damages (damages above and beyond the normal expense and inconvenience of defending an action, a requirement of the tort of malicious prosecution) several complaints filed by the plaintiff were dismissed. Eventually, the plaintiff refilled a complaint and this time he alleged that the defendants committed the tort of willful and wanton prosecution of an adversarial proceeding. **ISSUE:** Does such a tort exist in Illinois. **ANSWER:** No. The trial court correctly dismissed the latest complaint of the plaintiff.

4. **Smith v. Boudreau, 304 Ill. Dec. 183, (1st Dist., No. 1-04-3175, June 29, 2006)** On October 20, 1992, the plaintiff in this case was arrested and taken to the police station for questioning concerning the murder of his grandfather and his great-aunt. On April 8, 1994, the defendant brought an federal action alleging that excessive force had been used against him in order to obtain his confession. On May 20, 1994, the defendant was convicted in state court of the murders. The federal judge dismissed the defendant's action and ruled that his federal civil rights action could not proceed until his appeal of his conviction has been decided. In July of 2002, the defendant's final appeal in his criminal case was decided. In July of

2003, the defendant filed a civil action in state court seeking redress for the excessive force used against him. The trial court ruled that the action was untimely and granted a motion to dismiss. **ISSUE:** Did the Statute of Limitations bar this defendant's civil action? **ANSWER:** Yes.

5. **Sperandeo v. Zavitz, 302 Ill. Dec. 957, (2nd Dist., No. 2-05-1192, June 14, 2006)** On May 3, 2003, a County animal control warden was transporting a stray dog to an animal control facility when he was involved in an accident. On April 15, 2005, the plaintiff in this case filed suit against the dog-catcher claiming injuries as a result of the accident. The defendant filed a motion to dismiss and argued that the one-year statute of limitations as set forth in section 8-101 of the Illinois Local Governmental Tort Immunity Act (745 ILCS 10/8-101) barred this action. The plaintiff argued that the one-year limitation only applied to the County, not to the defendant, who was sued in his individual capacity. The trial court denied the defendant's motion to dismiss but granted him leave to appeal and certified this issue to the appellate court. **ISSUE:** The issue certified to the appellate court was whether the one-year statute of limitations found in section 8-101 applied in this case or does the more generous two-year limitation found in section 13-202 of the Code of Civil Procedure (735 ILCS 5/13-202) govern? **ANSWER:** The appellate court determined that since the County is going to be liable for any damages applied to the defendant, the one-year limitations period must apply even though the County was not named in this suit.

6. **Wade v. City of Chicago, 301 Ill. Dec. 621, (1st Dist., No. 1-04-0642, March 22, 2006)** Believe it or not, this was a slow-speed chase case. The police officer noticed the suspect in an alley in downtown Chicago. Suspecting that the suspect was breaking into cars in the alley, the officer investigated. The suspect saw the officer and took off in his station wagon. The officer gave "chase" in his squad car with his emergency lights and siren working. However, this was downtown Chicago at 2:20 p.m. The officer never exceeded the speed limit as he attempted to follow the suspect. Eventually, the suspect got stuck in traffic with the officer some 20 to 25 cars behind. In a state of panic, the suspect drove his car up onto the sidewalk. In so doing, he clipped the victim in this case, thereby causing him severe injuries. The victim then sued everybody, including the officer and the City of Chicago. **ISSUE:** Did the officer's conduct in this case constitute willful and wanton misconduct sufficient to render him liable for the injuries of the victim? **ANSWER:** No. The officer did not drive recklessly nor did he cause the suspect to drive recklessly.

2005 CASES

1. **McElmeel v. Village of Hoffman Estates, 296 Ill. Dec. 328, (1st Dist., No. 1-04-0431, August 26, 2005)** The police received a report of a stranded motorist. A police officer responded to the scene and arranged for a tow truck to help. The officer stopped southbound traffic in order to allow the tow truck to pull the motorist out of a snowy ditch. While she turned on the emergency lights of her car she did not place any flares or similar devices to notify southbound traffic of the need to stop. Six cars lined up behind the officer's car waiting for the tow truck to do its job. Suddenly, a drunk driver struck the last car in line. A six-car chain-reaction accident then occurred. One person died and two others were severely injured. **ISSUE:** Was this officer liable for willful and wanton misconduct in failing to protect the citizens involved in the accident. **ANSWER:** No. Because this officer was not investigating a criminal violation but, rather, was merely trying to assist a motorist, she (and her agency) was held to be immune from liability, even if her conduct did constitute willful and wanton misconduct.

2004 CASES

1. **People v. Lanigan, et al., 353 Ill. App. 3d 422, 818 N. E. 2d 829, 288 Ill. Dec. 894, (1st Dist., No. 1-03-0421, October 20, 2004)** Five deputy sheriffs had just left a political fund raiser when they decided to stop off at a local bar. After enjoying the atmosphere of the bar for a time, the deputies climbed back into one of the deputy's cars for the ride back to the sheriff's department. On the way, a car cut the deputies off in traffic. This act enraged the deputies and they gave chase. The young man who was driving the car and his girlfriend did not know who was honking and shouting at them so they panicked and sped off. The deputies then conducted an off-duty, high-speed chase of these suspects through a residential area in the early morning hours. At some time during this case, the deputies were seen hanging out of their car, firing shots at the fleeing victims. Eventually, the victims pulled up in front of a local police station and sought assistance. The five deputies were arrested and charge with numerous offenses, including official misconduct and obstruction of justice. Following a bench trial, the deputies were found not guilty. (The opinion does not go into great detail to explain why) Thereafter, the defendants moved for the appointment of their attorneys as "special State's Attorneys" so that the County would pay for their attorneys' fees and other expenses. This motion the trial court denied. **ISSUE:** Did the trial court err in denying the defendants' motions for payment of their attorneys' fees? **ANSWER:** No. The trial court, under these circumstances, had the discretion to decide whether or not to order the payment of these expenses. It did not abuse that discretion here.

2. **Torres v. City of Chicago, 352 Ill. App. 3d 533, 816 N. E. 2d 816, 287 Ill. Dec. 849 (1st Dist., No. 1-03-0357, September 17, 2004)** The police responded to the scene of a multiple shooting on a City street. A witness informed the police that another victim of the shooting was lying on the floor of a nearby apartment. The police said to the witness "Don't worry about it. Get out of this area." When the witness again informed the police that another man was wounded, the police again ordered the witness to leave the area. When another witness informed the police that this same additional victim was bleeding on a bathroom of his apartment, the police told the man to wait because they had to take pictures of the scene on the street. The police finally did wonder up to the apartment, they found the victim lying on the floor but they left him there because for some reason they believed that he was drunk. One and one half hours later the police called for an ambulance. The victim later died from massive loss of blood. **ISSUE:** Where the police (and the City) absolutely immune from liability under these circumstances? **ANSWER:** No. They were immune from liability for failing to provide police services. However, this case did not involve police services. It involved emergency medical services. **ISSUE:** Were the defendants entitled to summary judgment based upon a qualified immunity. **ANSWER:** No. The plaintiff introduced sufficient evidence to let the jury decide whether the police acted willfully and wantonly.

3. **Fender v. Town of Cicero, 347 Ill. App. 3d 46, 807 N. E. 2d 606, 283 Ill. Dec. 1 (1st Dist., No. 1-02-0950, March 16, 2004)** The plaintiffs in this case were the representatives of family members who died in a house fire that had been caused by arson. It seems that on the day in question, the police arrived at the scene of the fire and were informed that numerous little children were still inside the burning house. The police, after taking a look at the house that was fully engulfed in flames, decided not to attempt to enter the house. The children died and the representatives of the dead children sued everybody, including the police that did not attempt a rescue. **ISSUE:** Under these facts, could the officers and their employer, the Town of Cicero, be liable for deaths of the fire victims. **ANSWER:** No. Under the Illinois Local Governmental Tort Immunity Act, both the officers and the Town were immune from liability.

2003 CASES

1. **Ozik v. Gramins, et al.** 345 Ill. App. 3d 502, 799 N. E. 2d 871, 279 Ill. Dec. 68, (1st Dist., No. 1-00-3280, October 27, 2003) **FACTS:** On the evening in question, 19-year-old Alexander Goldberg was driving his car at 60 miles-per-hour when he rear-ended a car in front of him. Rather than sticking around, Goldberg sped off, screeching his tires as he did so. Someone at the scene of the accident called the police and, when they arrived, informed them that Goldberg had already left the scene of the accident. The police followed Goldberg, caught up with him and pulled him over. The officers issued five citations to Goldberg, including one for leaving the scene of an accident. They then let him be on his way. Shortly thereafter, Goldberg hit a tree and killed one of his passengers. After this second accident, Goldberg's blood was tested. He had a blood-alcohol content of .204. Thereafter, the estate of the dead passenger brought suit against the police officers and their employer, the Village of Skokie, for wrongful death. This case went to the jury and they brought back a judgment of \$1.4 million against the defendants. **ISSUE:** Could the defendants be held liable based upon their conduct in allegedly allowing Goldberg to retake control of his car even though the officers knew or should have known that he was intoxicated? **ANSWER:** Yes, if that conduct was found to have been willful and wanton.

2. **Harris v. City of Ottawa**, 343 Ill. App. 3d 965, 796 N. E. 2d 667, 277 Ill. Dec. 581 (3rd Dist., No. 3-02-0637, September 29, 2003) The plaintiffs were injured as a result of a collision with a car being driven by Andrew Harris, who was leading officers from the Ottawa Police Department on a high speed chase. The plaintiffs sued the City, claiming that the police were negligent in their pursuit of the Harris. The City moved to dismiss, arguing that the Plaintiffs failed to allege that the conduct of the police was willful and wanton. The trial court denied the City's motion and certified this question to the appellate court. The issue before the court was whether the proper standard of care in a case involving potential tort liability for a municipal arising out of a high-speed chase by a municipal police officer was the standard of reasonable care (section 11-205(e) of the Vehicle Code) or the standard of willful and wanton conduct (the Tort Immunity Act). The appellate court ruled that the appropriate standard must be willful and wanton conduct. Thus, there is no liability for mere negligence on the part of the police.

3. **Suwanski v. Village of Lombard**, 342 Ill. App. 3rd 248, 794 N. E. 2d 1016, 276 Ill. Dec 766 (2nd Dist., No. 2-02-0905, July 30, 2003) The defendant police officer received a report of a car carrying an illegal load of junk on its top and hood. Responding to the scene of the report, the officer confirmed the report and concluded that the car was being driven in an unsafe manner. Additionally, after watching the car weave all over the road, the officer concluded that the driver was intoxicated. Consequently, the officer attempted to pull the car over. The driver of the car refused to pull over and sped away at a high speed, dropping junk in all directions. During this chase, the police dispatcher informed the officer that the car was stolen. After a chase that traveled 6.5 miles and lasted more that eight minutes, the stolen car entered an intersection against a red light and crashed into another car, killing the driver of that car and the driver of the stolen car. Based upon these acts, the husband of the victim brought suite against the Village for wrongful death. The trial court dismissed the action and ruled that the plaintiff offered insufficient proof that the police conduct was a the proximate cause of the victim's death and that the police officer acted wantonly and willfully during the chase. The appellate court disagreed with the trial court and ruled that sufficient evidence was offered to let these two issues go to the jury. **CONCLUSION:** The factual question of whether the police chase constituted wanton and willful conduct was allowed to go to the jury. Justice O'Malley stated that this was a first for Illinois.

4. **Brawner v. City of Chicago**, 337 Ill. App. 3rd 875, 787 N. E. 2d 282, 272 Ill. Dec 467 (1st Dist., No. 1-00-3594, March 17, 2003) A suspect is shot to death by City police officers who are attempting to detain him. The administrator of his estate brought a wrongful death and a survival action against the City of Chicago and the police officer who fired the fatal shot. A jury returned a verdict in favor of the defendants. The appellate court affirmed that verdict.

5. **Romine v. Village of Irving**, 336 Ill. App. 3rd 624, 783 N. E. 2d 1064, 270 Ill. Dec 764 (5th Dist., No. 5-01-0798, January 15, 2003) The plaintiffs in this case were injured when a drunk driver ran into them. They brought suit against the City of Irving because earlier several Irving police officers had detained the husband of the drunk driver after he was involved in a drunken brawl. In effect, the plaintiff's argued that the police should never have let either the husband or his wife go after the brawl. The actions of the police allowed the wife to drive while intoxicated and get into an accident. The trial court granted summary judgment in favor of the village. The appellate court affirmed and ruled that the police could not have reasonably known that the wife would walk away from them, get into her van and illegally drive and then have an accident.

2002 CASES

1. **Fabiano v. City of Palos Hills**, 336 Ill. App. 3rd 635, 784 N. E. 2d 258, 271 Ill. Dec 40 (1st Dist., No. 1-00-1266, November 26, 2002) The plaintiff in this case ran a day-care center for young children. Based upon a complaint from one of those children and after a long police investigation, the plaintiff was charged with numerous counts of aggravated criminal sexual assault. After a jury trial on one of those counts, the plaintiff was acquitted. The People then dismissed the rest of the charges. The plaintiff then brought a malicious prosecution suit against the City of Palos Hills, the Chief of Police of the City and two police officers. The trial court granted the defendant's motions for summary judgment. The appellate court reversed that ruling and concluded that (1) the police were not entitled to absolute immunity from suit based upon their grand jury testimony; (2) the police and the City was not entitled to qualified immunity as a matter of Illinois law; and (3) enough questions of fact remained to allow this case to go to the jury.

1999 CASES

1. **Aboufariss v. City of De Kalb**, 305 Ill. App. 3d 1054, 713 N. E. 2d 804, 239 Ill. Dec. 273 (2nd Dist., No. 2-98-1085, July 7, 1999) The plaintiff in this case was accused of abducting his own child. Thereafter, the plaintiff brought suit against the an assistant State's Attorney, a city police officer, the City of De Kalb, and the County of De Kalb claiming malicious prosecution, false arrest, conspiracy, defamation, invasion of privacy, and civil rights violations under Section 1983. The trial court granted the County's motion to dismiss and granted the remaining defendants' motions for summary judgment. The appellate court affirmed the trial court's actions and ruled that (1) evidence supported the conclusion that the police and the assistant State's Attorney had probable cause to believe the plaintiff had committed child abduction; (2) the assistant State's attorney was protected by both absolute immunity and public official immunity; (3) the police were protected by qualified immunity; and (4) the governmental bodies could not be liable under Section 1983 for the conduct of their police absent a showing that the police conduct inflicted constitutional harm.

In the Seventh Circuit Court of Appeals

+ = positive

- = negative

0 = neutral or both positive and negative

YEAR 2007

- 1. **Holmes v. Village of Hoffman Estates**, (7th Cir., No. 06-2759, December 26, 2007) In an action for **false arrest**, **excessive force**, and **malicious prosecution**, summary judgment for the defendants was reversed in part where disputes of material fact exist as to the plaintiff's malicious prosecution and excessive force claims.

- + 2. **Williams v. Rodriguez**, (7th Cir., No. 06-4126, December 6, 2007) In a Section 1983 action alleging **false arrest and deliberate indifference to medical needs**, summary judgment for the defendants is affirmed on most claims and modified to an order of dismissal for lack of jurisdiction for the other claims.

- + 3. **Jackson v. Frank**, (7th Cir., No. 07-2315, December 5, 2007) In a Section 1983 action alleging that a prison violated a prisoner's First Amendment rights by **prohibiting him from receiving a commercially-produced picture of an actress**, summary judgment for the defendant's was affirmed where the ban on receiving commercially-produced pictures of celebrities was reasonably related to legitimate penological objectives.

- 4. **White v. Gerardot**, (7th Cir., No. 07-1418, December 5, 2007) In a Section 1983 action alleging the use of **excessive force** by a police officer, an appeal of the denial of summary judgment on grounds of qualified immunity was dismissed where all of the arguments made by the party seeking in invoke jurisdiction were dependent upon disputed facts.

- + 5. **Hall v. Bates**, (7th Cir., No. 07-1043, November 11, 2007) In an suit against two police officers for **false arrest** in violation of the Fourth Amendment, summary judgment for the defendants was affirmed where: 1) the circumstances taken as a whole created probable cause to believe that the plaintiff-husband had committed insurance fraud with regard to a claim for stolen golf clubs, and thus his false arrest claim failed; and 2) the plaintiff's wife's claim, arising from her interview and stay for two and a half hours at the police station, failed as she did not ask if she was free to leave or was under arrest.

- + 6. **George v. Smith**, (7th Cir., No. 07-1325, November 9, 2007) In a suit brought by a Wisconsin prisoner against guards, wardens, nurses, members of the parole board, and others, alleging, inter alia, a **failure to provide adequate medical care, mail censorship, and mishandling of his applications for parole**, dismissal and summary judgment ruling against the plaintiff were affirmed.

- + 7. **Henry v. Jones**, (7th Cir., No. 06-3855, November 1, 2007) In a suit brought by a former police officer alleging **racial discrimination in his termination** from the police force, summary judgment for the defendants was affirmed where the plaintiff presented insufficient evidence that the decision to terminate him was made on account of his race.

O 8. **Vose v. Kliment**, (7th Cir., No. 07-1792, October 26, 2007) In a Section 1983 action alleging that the defendants violated the plaintiff's constitutional right to **free speech** by dismissing him from a police department after he reported on officer wrongdoing, the denial of summary judgment for the defendant's on grounds of qualified immunity was reversed where the plaintiff's speech was made pursuant to his official responsibilities, and thus was not constitutionally protected.

+ 9. **Martinez v. City of Chicago**, (7th Cir., No. 06-3739, August 28, 2007) In a suit brought against the City of Chicago and two of its police officers, dismissal of the suit for failure to prosecute was affirmed where the court did not abuse its discretion in denying the plaintiff's motion to reconsider based on excusable neglect since the plaintiff's attorney had engaged in a pattern of delay and noncompliance with court orders that developed from the time the case was filed.

- 10. **Campbell v. Miller**, (7th Cir., No. 06-1981, August 28, 2007) In a Section 1983 suit against a city and police officers regarding a **strip search** of the plaintiff, judgment for one of the defendant-officers was reversed where no reasonable jury could have found that a strip search conducted in public for no identifiable reason conformed to the fourth Amendment.

O 11. **Belcher v. Norton**, (7th Cir., No. 06-3174, August 15, 2007) In a suit against a municipality and a police officer alleging that the plaintiffs were subjected to an **unlawful seizure**, summary judgment for the defendants was reversed where: 1) there was a genuine issue of material fact concerning whether the officer had probable cause to arrest the defendants; 2) the officer was not entitled to qualified immunity; 3) the deprivation of the plaintiff's property by the officer was random and unauthorized and the plaintiff's laced an adequate state law remedy; and 4) a trier of fact could find that the actions of the officer shocked the conscience for substantive due process purposes. The dismissal of the municipality was affirmed where the officer was not a final policymaker for the town.

+ 12. **Sides v. City of Champaign**, (7th Cir., No. 06-1039, August 8, 2007) In a suit arising out of **a detention and prosecution for public indecency**, summary judgment for the defendants was affirmed where: 1) the district court did not abuse its discretion in refusing to allow the plaintiff to amend his complaint; 2) any evidentiary errors were harmless; 3) the plaintiff was not deprived of a constitutional right through the City's refusal to accept a settlement offer; 4) a discrepancy in the prosecution was an appropriate exercise of prosecutorial discretion; 5) the behavior of the police officers in detaining the plaintiff was reasonable, and did not display deliberate indifference to a serious injury or medical need; and (6) the plaintiff's claim of an illegal search by a police officer failed because he did not name the officer in the complaint and did not prove that the other officers should bear responsibility for failing to stop the searching officer.

+ 13. **Guzman v. Sheahan**, (7th Cir., No. 06-3647, August 7, 2007) In a Section 1983 action against several prison guards and law enforcement officials alleging a violation of the plaintiff's due process rights as the result of an altercation with another prisoner, summary judgment for the defendants was affirmed where: 1) the steps taken by the officer monitoring the area where the fight occurred did not constitute **deliberate indifference**; and 2) the plaintiff did not show that the **sheriff was deliberately indifferent** to the consequences of delays in prisoner reclassification.

O 14. **Steidl v. Fermon**, (7th Cir., No. 06-2017, July 18, 2007) In a Section 1983 action against police officers for **concealing exculpatory evidence**, the denial of summary judgment for the defendants was

affirmed where the Brady line of cases has clearly established a defendant's right to be informed about exculpatory evidence throughout the proceedings, including appeals and authorized post-conviction procedures, when that exculpatory evidence was known to the state at the time of the original trial. The denial is reversed where the defendants were entitled to qualified immunity of the plaintiff's claim that he was denied proper access to the courts.

+ 15. **Morales v. Jones**, (7th Cir., No. 06-1463, July 17, 2007) In a suit alleging **retaliation** by a police chief and deputy in violation of the First Amendment, judgment for the plaintiffs was reversed and remanded where: 1) one plaintiff's speech was not protected by the First Amendment; and 2) it was unclear whether the jury found that the defendants retaliated against the other plaintiff solely on the basis of the protected speech, the unprotected speech, or a combination of both.

+ 16. **Wagner v. Washington County**, (7th Cir., No. 06-2045, July 12, 2007) In a suit alleging a violation of Section 1983 after the sheriff's deputies **arrested the plaintiff during a town-hall meeting** on the belief that his presence violated a protective order, summary judgment for the defendants was affirmed where they were immune from suit under the doctrine of qualified immunity.

- 17. **Williams v. Liefer**, (7th Cir., No. 06-3493, July 5, 2007) In a Section 1983 action against corrections employees alleging that they were **deliberately indifferent** to his medical needs in violation of the Eighth and Fourteenth Amendments, a jury verdict for the plaintiff was affirmed over the defendant's arguments that: 1) the plaintiff offered no verifying medical evidence that the delay in treatment harmed him; 2) they were entitled to qualified immunity; and 3) in the alternative, they should receive a new trial.

O 18. **Sigsworth v. City of Aurora**, (7th Cir., No. 05-4143, May 25, 2007) In a suit brought by a police officer against a city and others alleging **retaliation for protected speech**, dismissal of the complaint was affirmed where the plaintiff's speech was not made outside of his capacity as a police investigator and a task force member, so he was not speaking as a citizen for First Amendment purposes. The denial of the plaintiff's motions for leave to file a second amended complaint was affirmed where the district court did not abuse its discretion because there were no manifest errors of law or newly discovered evidence that merited consideration, and amendments to the complaint would have been futile.

+ 19. **Steen v. Myers**, (7th Cir., No. 06-1771, May 21, 2007) In a Section 1983 action against a police officer involved in a **high-speed chase** that resulted in the death of a motorcycle driver and the extensive injury of his passenger, summary judgment for the defendant was affirmed where: 1) there was not evidence that the officer forcibly stopped the vehicle; and 2) there was no evidence of either conscience-shocking behavior or an intent to cause harm unrelated to a legitimate government interest.

+ 20. **Harris v. Kuba**, (7th Cir., No. 05-3357, May 18, 2007) In a Section 1983 action against two police officers brought by a former prisoner later **pardoned on the basis of innocence**, summary judgment for the officers was affirmed where: 1) evidence that the plaintiff pointed to as a Brady violation was neither favorable to his case nor suppressed by the officer in question; and 2) there is no relief available under Brady for an officer's false statement.

- 21. **Powers v. Snyder**, (7th Cir., No. 04-1961, May 3, 2007) The dismissal of a prisoner's civil rights suit was reversed in part where: 1) documents attached to the plaintiff's pro se complaint showed a possible **willful indifference** on the part of his treating physicians; 2) the judge should have allowed the

plaintiff to amend his claim that confinement to a smoking cell amounted to **cruel and unusual punishment and deliberate indifference**; and 3) the judge should have allowed an amendment concerning the plaintiff's claim that the warden had retaliated against him for the exercise of his First Amendment rights..

- 22. **Jenkins v. Bartlett**, (7th Cir., No. 06-2495, April 23, 2007) In an **excessive force** suit brought as a Section 1983 action against a police officer, a municipality and the chief of police, a verdict for the defendant-officer and summary judgment for the city and the chief of police are affirmed over the plaintiff's argument that: 1) the district court erred when it allowed physicians to testify as expert witnesses because the defendants failed to provide an expert report; 2) the physicians' testimony did not satisfy the Daubert standard; 3) the district court erred when it sustained the officer's claim of attorney-client privilege despite a third-party's presence during the conversations; and 4) the city displayed deliberate indifference when training officers on the use of force against suspects in vehicles..

O 23. **Spiegla v. Hull**, (7th Cir., No. 05-3722, March 30, 2007) In a suit brought by a correctional officer under a Section 1983 alleging **retaliation for engaging in protected speech**, judgment for the plaintiff was reversed after consideration of the Supreme Court decision of Garcetti v. Ceballos, 126 S. Ct. 1951 (2006) where the plaintiff was speaking as a correctional officer not a citizen, thus the First Amendment does not insulate her statements from employer discipline.

- 24. **Vinning-El v. Long**, (7th Cir., No. 06-1673, March 27, 2007) In a suit brought by an inmate against prison guards under a Section 1983, summary judgment for the defendants on qualified immunity grounds was reversed and the case remanded where: 1) the district court was wrong to conclude that prison guards could not have known at the relevant time that the conditions described by the plaintiff violated the Eighth Amendment; and 2) the plaintiff presented enough evidence to raise a genuine issue of material fact as to whether the defendants acted with deliberate indifference.

- 25. **Washington v. Hauptert**, (7th Cir., No. 05-4225, March 27, 2007) In a Section 1983 action alleging a violation of the plaintiff's Fourth Amendment rights after **an arrest for domestic battery**, the denial of summary judgment for the police officers was affirmed where: 1) the facts, if viewed in a light most favorably to the non-moving party, were sufficient for a jury to find that the plaintiffs suffered a constitutional violation; and 2) the contours of the alleged constitutional violation were clearly established at the time of the incident.

+ 26. **Boyd v. Owen**, (7th Cir., No. 05-3587, March 22, 2007) In a suit brought against a child welfare investigator and her supervisor alleging a violation of the plaintiff's rights to **due process** in their investigation of a claim of child abuse, the denial of the defendant's motion for summary judgment on grounds of qualified immunity was reversed and remanded with instructions to grant the motion where the plaintiff failed to meet his burden of demonstrating that the alleged constitutional violation was clearly established when it occurred.

O 27. **Krieg v. Seybold**, (7th Cir., No. 06-2322, March 21, 2007) In a suit alleging Fourth Amendment and due process violations brought by a former city employee who was **terminated after refusing to submit to a random drug test**, summary judgment for the city was affirmed where: 1) the plaintiff performed a safety sensitive job such that the city's interest outweighed the plaintiff's expectation of privacy; and 2) the plaintiff was an at-will employee who did not have a property interest in his job for purposes of due process.

O 28. **Witkowski v. Milwaukee County**, (7th Cir., No. 06-3627, March 13, 2007) In a suit by a deputy who was **shot while guarding a courtroom**, judgment on the pleadings for the defendants was affirmed where disregarding a known risk to a public employee did not violate the due process clause of the Fourteenth Amendment.

- 29. **Edwards v. Snyder**, (7th Cir., No. 04-2458, March 7, 2007) In a suit alleging **deliberate indifference to the prisoner's injuries and medical negligence**, the dismissal of the prisoner's complaint was reversed and the medical negligence claim reinstated where: 1) the complaint was neither factually nor legally frivolous and stated a cognizable claim for deliberate indifference; and 2) the state-law negligence claim related to the same set of operative facts as the Eighth Amendment claim for deliberate indifference.

+ 30. **Henning v. O'Leary**, (7th Cir., No. 06-2378, February 16, 2007) In a Section 1983 action against a police officer alleging violations of the Fourth Amendment and the right to society and companionship after the **shooting death of a suspect**, summary judgment for the defendant was affirmed where the defendant had reasonable cause to believe that the suspect posed a danger of serious bodily harm, and the plaintiffs did not assert their right of survivorship in the remaining Fourth Amendment claims.

+ 31. **Redwood v. Dobson**, (7th Cir., No. 05-4324, February 7, 2007) Summary judgment for the defendants in this Sections 1983 and 1985 action alleging violations of the First Amendment and conspiracy to maintain a **malicious prosecution** was affirmed where: 1) one defendant had prosecutorial immunity from the suit; 2) there was no conspiracy to maintain a wrongful prosecution; 3) a federal law suit was not the proper place to pursue a remedy for perceived unethical behavior by an attorney; and 4) the trial court did not abuse its discretion by deciding state law claims on the merits.

+ 32. **Mannoia v. Farrow**, (7th Cir., No. 06-1430, February 7, 2007) Summary judgment for the defendant-detective in a suit brought by the suspect in a child abduction case alleging a violation of the Fourth Amendment in the **issuance an arrest warrant** for the suspect was affirmed where the plaintiff did not establish that the defendant violated his Fourth Amendment rights, thus the defendant was protected from the plaintiff's suit through the defense of qualified immunity.

O 33. **Alexander v. City of Milwaukee**, (7th Cir., No. 06-1505, January 18, 2007) Judgment for the plaintiffs in a suit by police officers alleging **discriminatory promotion practices** favoring women and minorities was affirmed over the defendant's arguments that: 1) they were entitled to qualified immunity in so far as their actions did not violate a clearly established constitutional right of the plaintiffs; and 2) municipal liability was inappropriate under these circumstances.

- 34. **Sallenger v. Oakes**, (7th Cir., No. 05-3470, January 10, 2007) The denial of a motion for summary judgment in a Section 1983 action alleging a violation of the Fourth Amendment's right to be free from the use of **excessive force** was affirmed where the police officers in question were not entitled to qualified immunity since the officer's use of force was objectively unreasonable according to the facts viewed in the light most favorable to the plaintiff for summary judgment purposes.

YEAR 2006

- + 1. **Tibbs v. City of Chicago**, (7th Cir., No. 05-1634, November 27, 2006) Summary judgment for the city and police officers in a Section 1983 suit alleging a violation of the plaintiff's Fourth Amendment rights is affirmed where no reasonable jury could have found that the officer's actions were objectively unreasonable.

- 2. **Gillis v. Litscher**, (7th Cir., No. 06-2099, November 14, 2006) Summary judgment for corrections officers in a Section 1983 suit alleging a violation of a prisoner's Eighth and Fourteenth Amendment rights was vacated and remanded where there were genuine issues of material fact concerning whether **a disciplinary program** violated the Eighth Amendment and where the plaintiff may have been able to convince a jury that the program imposed an atypical and significant hardship sufficient to establish a liberty interest.

- + 3. **Cady v. Sheahan**, (7th Cir., No. 04-3518, November 3, 2006) Summary judgment for officers in a Section 1983 action alleging false **imprisonment, false arrest, and an illegal search and seizure** was affirmed where: (1) a protective search for weapons of both the plaintiff's person and his briefcase was warranted and no issue of material fact was presented; (2) the officers were justified in initiating a Terry stop because of the defendant's presence outside of a courthouse hours before it opened, his appearance and his evasiveness; and (3) the officers did not exceed the permissible scope and duration of the Terry stop.

- 4. **McCann v. Nielson**, (7th Cir., No. 05-3699, October 26, 2006) A grant of the defendant's motion for judgment on the pleadings in a suit against a deputy for **use of excessive force** was reversed and remanded where the district court erred in applying the Heck rule prohibiting a Section 1983 claim where it implies the invalidity of a criminal conviction since the plaintiff's complaint could reasonably have been read in a manner that did not implicate Heck.

- 5. **Pratt v. Tarr**, (7th Cir., No. 05-4470, September 27, 2006) Dismissal of a prisoner's appeal for failure to state a claim was reversed where the prisoner's allegations that the prison denied him writing materials, access to law books, and the like was adequate to state a claim for **denial of access to the courts**.

- 6. **Lopez v. City of Chicago**, (7th Cir., No. 05-1877, September 22, 2006) Judgment as a matter of law for the defendant-City in a suit alleging **violation of the 4th Amendment and intentional infliction of emotional distress surrounding the detention of an innocent man** on murder charges was reversed where the plaintiff was entitled to judgment as a matter of law on the issue of his right to a prompt judicial determination of probable cause, and there was conflicting evidence at trial on his constitutional claim relating to the conditions of his warrantless detention and his state law claim for intentional infliction of emotional distress.

- + 7. **McKinney v. Duplain**, (7th Cir., No. 05-3812, September 12, 2006) The appeal of the denial of a motion for summary judgment based on qualified immunity in a Section 1983 suit against a university police officer for **excessive force in the shooting death** of a university student was dismissed where the court lacked jurisdiction to review the district court's conclusion that a genuine factual dispute existed.

+ 8. **Collins v. Seeman**, (7th Cir., No. 05-1309, September 11, 2006) Summary judgment in favor of the defendants in a **deliberate indifference** suit surrounding the suicide of a prison inmate was affirmed where there was no evidence from which a jury could have inferred that the officer on duty recklessly or intentionally disregarded a known risk of suicide.

+ 9. **Lagerstrom v. Kingston**, (7th Cir., No. 06-1521, September 7, 2006) The dismissal of a prisoner's claims under a Section 1983 action was affirmed where: (1) the plaintiff received due process in hearings to **remove him to a Supermax facility** despite the fact that the removal was eventually overturned; and (2) the plaintiff alleged no retaliation for engaging in a constitutionally-protected activity that would have rendered the proceeding a violation of substantive due process.

- 10. **Acevedo v. Canterbury**, (7th Cir., No. 04-4292, August 10, 2006) Judgment as a matter of law for the defendant/police officer in a Section 1983 suit alleging **excessive use of force and false arrest** was reversed where: (1) a police officer who files a false report may be liable for false arrest if the filing of the report leads to a seizure in violation of the Fourth Amendment, even if he did not conduct the arrest himself; and (2) a blow by a police officer that immobilizes the recipient qualifies as a seizure for excessive force analysis.

- 11. **Fuerst v. Clark**, (7th Cir., No. 05-4162, July 27, 2006) Summary Judgment for the defendant in a suit alleging **retaliation for political statements** was reversed where there were genuine issues concerning whether the deputy sheriff making the statements was acting in his role as a deputy sheriff or as a union representative.

O 12. **Hernandez v. City of Chicago**, (7th Cir., No. 04-2246, July 26, 2006) Judgment in a Section 1983 suit arising out of a detention based on **mistaken identity** was affirmed where the police department's identification policies were constitutional and operational error did not support municipal liability, and reversed where the custodians may rely on a judicial detention order unless the custodian knew that the judge refused to make an independent decision or there was doubt about which person the judge ordered held.

O 13. **Mills v. City of Evansville**, (7th Cir., No. 05-3207, June 20, 2006) Summary judgment for the defendants in a Section 1983 action alleging **retaliation for protected statements** was affirmed where: (1) the plaintiff made her statement in her role as a public official and the First Amendment does not apply; (2) a lateral transfer was an appropriate method of ensuring faithful implementation of a public employer's interests; and (3) the plaintiff did not offer proof of sexual discrimination.

O 14. **Healy v. City of Chicago**, (7th Cir., No. 04-3155, June 16, 2006) Summary judgment for the defendants in a Section 1983 case alleging **retaliation for an employee's allegations of corruption** was affirmed where the employee did not present evidence substantiating the causal link between his protected reports of corruption and the subsequent adverse employment actions.

+ 15. **DeLuna v. City of Rockford**, (7th Cir., No. 05-1337, June 18, 2006) Summary judgment of the defendants in a Section 1983 case and a **wrongful death action** was affirmed where: (1) the use of deadly force was reasonable; (2) the plaintiff failed to allege any facts in support of her state law wrongful death claim; and (3) nothing about the post-incident interview would suggest to the plaintiff that she was not free to leave.

+ 16. **Borello v. Allison**, (7th Cir., No. 05-3515, May 11, 2006) The denial of summary judgment for the defendants in a prisoner's suit alleging a **violation of Eighth Amendment Rights** was reversed and remanded for entry of summary judgment where the defendants were entitled to qualified immunity since the plaintiff did not show that his constitutional rights had been violated.

+ 17. **Kramer v. Village of North Fond du Lac**, (7th Cir., No. 03-4142, May 4, 2006) Summary judgment in favor of the defendants in this Section 1983 case was affirmed where the police did not **selectively prosecute** the plaintiff by only targeting institutions within its jurisdiction, and where **entrapment** was not a cause of action under Section 1983.

+ 18. **Thurman v. Village of Homewood**, (7th Cir., No. 05-2940, May 2, 2006) Summary judgment in favor of the defendants in this Section 1983 case involving **Fourth Amendment and retaliation claims** and the dismissal of state claims were affirmed where: (1) the police did not unreasonably extend the duration of their investigation; (2) the plaintiff produced no evidence regarding his retaliation claim; (3) the officers did not act under color of law; and (4) the denial of supplemental jurisdiction was proper.

- 19. **Evans v. City of Chicago**, (7th Cir., No. 06-1253, April 26, 2006) The denial of summary judgment for the defendants in a suit involving **police intimidation of a witness** was affirmed where the plaintiff was not barred from arguing that the police forced a witness to lie simply because the same argument was denied without prejudice in a motion during the original criminal trial.

O 20. **Marshall v. Knight**, (7th Cir., No. 04-1062, April 26, 2006) The denial of a petition to amend a complaint in a Section 1983 case involving a prisoner's claim of the **denial of access to the courts** was reversed where a pro se litigant deserves leeway when amending complaints, and the dismissal of the case was reversed where the prisoner's allegations met the lenient pleading standards for pro se litigants.

O 21. **Pourghoraishi v. Flying J. Inc.**, (7th Cir. No. 05-1107, April 20, 2006) The dismissal of Section 1981 and 1983 claims in a case involving alleged **racial discrimination** during an arrest was affirmed where the defendants in the 1981 claim could not have known that the plaintiff belonged to a protected category, but was reversed where there was a material question of whether the arresting officer had probable cause to arrest the plaintiff.

- 22. **Miller v. Jones**, (7th Cir., No. 05-1107, April 17, 2006) The refusal to grant this chief of police qualified immunity in a suit alleging **retaliation** based on speech was affirmed where the plaintiff's speech was on a matter of public concern, and where the unconstitutionality of the chief's acts was clearly established at the they occurred.

+ 23. **Lindell v. Litcher**, (7th Cir., No. 04-2020, April 4, 2006) Summary judgment for the defendants in a prisoner's suit against prison guards for **violations of the Eighth Amendment** was affirmed where: (1) there was no compelling reason for the guards to believe that the prisoner was at risk; (2) there was no right to be housed with cellmates of the same race or culture; and (3) the prisoner was capable of pro se representation.

+ 24. **Freeman v. Berge**, (7th Cir., No. 05-2820, March 23, 2006) Judgment as a matter of law for the defendant's in a Section 1983 prisoner's suit alleging **meal deprivation** was affirmed where the

prisoner's failure to comply with mealtime regulations led to the deprivation instead of a desire on the part of the guards to punish, and where the prisoner suffered no lasting detrimental health problems.

+ 25. **Mustafa v. City of Chicago**, (7th Cir., No. 05-2101, March 23, 2006) Summary judgment for the defendants in a case alleging **false arrest** and a violation of civil rights under Section 1983 was affirmed where the arresting officers had probable cause, and even lacking probable cause they would have had qualified immunity since a reasonable officer could have believed it was lawful to arrest the plaintiff.

+ 26. **Askew v. City of Chicago**, (7th Cir., No. 05-2194, March 15, 2006) Summary judgment for the defendants in a Section 1983 case involving claims of **arrest without probable cause** was affirmed where uncontested facts supplied probable cause for the plaintiff's arrest, despite the plaintiff's arguments that the officers should not have believed his accusers.

+ 27. **Pinston v. Madry**, (7th Cir., No. 03-2973, March 14, 2006) The grant of a motion for judgment on partial findings in a Section 1983 case surrounding a prisoner's claims that **guards did not protect him from an inmate or give him medical care** was affirmed where the judge did not err by adopting the recommendation of the magistrate, finding that the guards were not deliberately indifferent, or finding that the guards took the necessary steps to secure medical care.

+ 28. **Wallace v. Kato**, (7th Cir., No. 04-3949, March 8, 2006) Summary judgment in favor of the defendants in an action against the City of Chicago and two police officers was affirmed where the suit did not meet the statute of limitations requirements since a Section 1983 concerning an **unlawful arrest** claim accrued at the time of arrest, and where the defendant's other constitutional claims failed as a matter of law.

+ 29. **Norfleet v. Gehrke**, (7th Cir., No. 05-1237, March 3, 2006) The denial of summary judgment in favor of two defendants in a prisoner's suit alleging a violation of the Eighth Amendment was reversed where there was no evidence that a prison doctor and a prison employee acted with the "culpable mental state" required for a finding of **deliberate indifference** to serious medical needs.

+ 30. **Borzych v. Frank**, (7th Cir., No. 05-3907, March 2, 2006) The denial of a prisoner's claims in a Section 1983 action arising out of a **ban on religious literature** that advocated racial violence was affirmed where the prison system's ban was the least restrictive means to promote a compelling state safety interest, and the overbreadth of the internal prison regulation was relatively small.

0 31. **Sornberger v. City of Knoxville**, (7th Cir., No. 04-3614, January 20, 2006) Summary judgment for the defendants in a civil rights action involving **allegations of improper arrest, interrogation, and concealment of evidence** was reversed in part as to certain claims involving unlawful arrest, involuntary confession, and a determination that a municipal defendant could not be found liable on a municipal liability theory.

+ 32. **Scarver v. Litscher**, (7th Cir. No. 05-2999, January 18, 2006) Summary judgment for the defendants in a prisoner's civil rights suit alleging a violation of his constitutional right not to be subjected to **cruel and unusual punishment** was affirmed where the plaintiff failed to cite evidence to overcome the defendant's denials that they knew cell conditions were making his mental illness worse.

- + **33. Johnson v. Doughty, (7th Cir., No. 04-1139, January 17, 2006)** The denial of counsel, and summary and final judgments for the defendants in a case against prison doctors and prison officials under Section 1983 were affirmed involving claims that the defendants were **deliberately indifferent** to the prisoner plaintiff's serious medical needs by treating his hernia through non-surgical means.

- **34. Van Gilder v. Baker, (7th Cir., No. 05-1119, January 13, 2006)** The summary judgment for a police officer defendant in a civil rights case alleging **excessive force** was reversed where the district court erred in applying the wrong law to the plaintiff's claims since the plaintiff's claims did not necessarily imply the invalidity of the plaintiff's conviction for resisting arrest.

- + **35. Davis v. Novy, (7th Cir., No. 04-4096, January 6, 2006)** The judgment as a matter of law for the police officer defendants in a civil rights action alleging **illegal detention and search** by the police was affirmed where no reasonable jury could have found that the defendants lacked probable cause to stop the plaintiff or that consent to a search of the plaintiff's truck and home was legally coerced.

- + **36. Alexander v. City of South Bend, (7th Cir., No. 04-2535, January 3, 2006)** Summary judgment for the defendants in a civil rights case arising from the plaintiff's **wrongful conviction and subsequent imprisonment** for attempted rape and other crimes was affirmed where the plaintiff failed to identify a constitutional violation on the part of any actor or produce the most basic evidentiary support for his claims.

YEAR 2005

- **1. Ben-Yisrayl v. Davis, (7th Cir., No. 03-3169, December 13, 2005)** Grant of the defendant's petition of a writ of habeas corpus in a capital murder case was affirmed where the state court's determination that there was no Fifth Amendment violation by the prosecutor was an unreasonable determination in light of the evidence, and its harmless error analysis was an unreasonable application of clearly-established, federal law.

- + **2. Pepper v. Village of Oak Park, (7th Cir., No. 04-3948, November 30, 2005)** Summary judgment for the defendants in a civil rights case under Section 1983 is affirmed where there was no constitutional violation of the plaintiff's rights since no evidence suggested that a police officer acted improperly or unreasonably in **supervising the removal of property from the plaintiff's home**.

- + **3. Ienco v. Angarone, (7th Cir., No. 03-4193, November 14, 2005)** Summary judgment for the defendants in a civil rights action stemming from an **illegal arrest** was affirmed where the plaintiff failed to present sufficient evidence to create a genuine issue of fact that the defendants violated the plaintiff's due process rights, and the plaintiff abandoned any Fourth Amendment claim he might have had.

- **4. Jones v. Williams, (7th Cir., No. 04-1605, October 3, 2005)** In a Section 1983 action, summary judgment in favor of the defendant-police officer was reversed where the defendant violated the plaintiff's clearly established rights when he **executed a validly issued warrant the officer knew to be facially ambiguous**.

- 0 5. **Lauth v. McCollum**, (7th Cir., No. 04-3782, September 20, 2005) The district court properly dismissed the plaintiff/police officer's section 1983 suit which claimed that the police chief deprived him of the equal protection of the law when the chief asked the Board of Police Commissioners to sanction the plaintiff for misfeasance.
- 6. **Abdullahi v. City of Madison**, (7th Cir., No. 04-4114, September 12, 2005) The dismissal of the plaintiff's Fourth Amendment Claim, alleging that the defendant-police officers used **excessive force** during his arrest, was reversed where the district court erred in ruling that there was no evidence that the defendants engaged in any objectively unreasonable conduct.
- + 7. **Wernsing v. Thompson**, (7th Cir., No. 03-3956, September 9, 2005) In a suit brought under section 1983 alleging that the defendant imposed a **prior restraint** on the plaintiff's constitutionally protected speech, summary judgment in favor of the plaintiff is reversed where the defendant was entitled to qualified immunity.
- 8. **Westefer v. Snyder**, (7th Cir., No. 03-3318, September 6, 2005) The district court improperly dismissed the plaintiff/inmate's section 1983 action which alleged that his transfer to another correctional facility constituted **retaliation for the exercise of First Amendment rights**.
- 9. **Green v. Butler**, (7th Cir., No. 04-2993, August 24, 2005) In a section 1983 action alleging **unlawful search and seizure**, defendant/parole agents are not entitled to qualified immunity where they did not comply with the Fourth Amendment's knock and announce rule.
- 10. **Kaufman v. McCaughtry**, (7th Cir., No. 04-1914, August 19, 2005) The dismissal of the plaintiff's Establishment Clause claim, alleging that the defendants infringed on his **right to practice his religion** when they refused to allow him to create an inmate study group to discuss atheism, is vacated where the defendant's actions do not have a secular purpose.
- 11. **Dawson v. Newman**, (7th Cir., No. 04-2894, August 18, 2005) In a section 1983 suit alleging **wrongful continued incarceration**, defendant/parole officials were not entitled to absolute immunity where they allegedly refused to investigate plaintiff's claim of entitlement to release on parole in the ordinary course of their duties.
- + 12. **Bleavins v. Bartels**, (7th Cir., No. 04-2415, August 16, 2005) In a civil rights action stemming from the **seizure of trailers** from a plaintiff/tax debtor, defendants were entitled to qualified immunity to qualified immunity where the plaintiff failed to establish a constitutional violation.
- + 13. **Waubanascum v. Shawano County**, (7th Cir., No. 04-3290, August 1, 2005) A jury verdict in favor of the plaintiff, who was **sexually abused while in foster care**, was reversed where the defendant/county owed no constitutional duty to plaintiff.
- + 14. **Holly v. Woolfolk**, (7th Cir., No. 03-2448, July 18, 2005) The plaintiff's 1983 suit against the correctional officers responsible for **placing him in solitary confinement** without a prior hearing was dismissed for lack of merit.

- + 15. **Schad v. Jones**, (7th Cir., No. 04-3396, July 15, 2005) In a section 1983 suit alleging that the defendant violated the First Amendment by transferring the plaintiff in retaliation for his statements, denial of the defendant's motion for summary judgment was reversed where the plaintiff's speech was not constitutionally protected.
- + 16. **Fisher v. Lovejoy**, (7th Cir., No. 04-3776, July 5, 2005) The dismissal of the plaintiff's section 1983 claim, alleging that the defendant did not protect him from being stabbed by other inmates, was affirmed where no reasonable jury could have concluded that his due process rights were violated when he was ordered to stand near other hostile inmates.
- 17. **Bradich v. City of Chicago**, (7th Cir., No. 04-3626, July 1, 2005) In a wrongful death suit, judgment in favor of the defendant/police officers was vacated where a reasonable jury could have concluded that they were deliberately indifferent to the plaintiff's serious medical needs.
- + 18. **Calhoun v. Ramsey**, (7th Cir., No. 03-3036, May 17, 2005) In a 1983 action, the dismissal of the plaintiff's claim, alleging deliberate indifference to his medical needs in violation of the Eighth Amendment (Cruel and Unusual Punishment), was affirmed over his challenges to jury instructions on municipal liability and the introduction of certain evidence.
- + 19. **Wall v. City of Brookfield**, (7th Cir., No. 04-3131, April 27, 2005) The district court properly dismissed the section 1983 suit which alleged that the defendant's unconstitutionally deprived her of property when it detained her dog for 60 days.
- + 20. **Lekas v. Briley**, (7th Cir., No. 04-1420, April 25, 2005) The plaintiff/inmate's constitutional claims, relating to his placement in disciplinary segregation, were dismissed where the conditions alleged did not amount to a deprivation of a liberty interest.
- + 21. **Rodriguez v. Briley**, (7th Cir., No. 04-1554, April 14, 2005) An inmate's non-compliance with a valid prison rule does not convert the consequences that flow automatically from that non-compliance into punishment actionable by a section 1983 proceeding.
- + 22. **Copeland v. County of Macon**, (7th Cir., No. 05-1666, April 13, 2005) The defendant/county was not liable for the acts of a correctional officer where the conduct of orchestrating an attack of a pre-trial detainee was not the type of conduct that the officer was authorized to perform, nor was his conduct actuated by a purpose to serve his employer.
- + 23. **Leaf v. Shelnett**, (7th Cir., No. 04-1318, March 18, 2005) In a wrongful death action under section 1983, the denial of the defendant-police officer's motion for summary judgment was reversed where he was entitled to qualified immunity since there was no unreasonable seizure in violation of the Fourth Amendment.
- + 24. **Harper v. Albert**, (7th Cir., No. 00-2758, March 17, 2005) In a section 1983 suit against prison guards, the district court properly dismissed certain defendants from the suit since the plaintiff failed to identify any particular guard that violated his constitutional rights with the use of excessive force.

- 25. **Brown v. Budz**, (7th Cir., No. 03-1997, February 16, 2005) The dismissal of the plaintiff-inmate's claim, alleging that the defendant-prison guard failed to protect, was reversed where the defendants were deliberately indifferent when they allowed an individual, with known violent propensities, unsupervised access to a room occupied by the plaintiff.

- + 26. **Russell v. Harms**, (7th Cir., No. 04-2065, February 2, 2005) In a section 1983 suit alleging the defendant-police officers conducted an illegal search, summary judgment in favor of the defendants was affirmed where the defendants did not violate the plaintiff's rights under the Fourth Amendment.

- + 27. **Carreon v. Ill. Dept. of Human Services**, (7th Cir., No. 03-4117, January 21, 2005) The dismissal of the plaintiff's suit, alleging retaliation for speaking out on matters of public concern, was affirmed where the defendant-employer had adequate non-retaliatory reasons to terminate the employment of the plaintiffs.

- + 28. **Lunini v. Grayeb**, (7th Cir., No. 04-1822, January 18, 2005) The plaintiff's suit, alleging that the police officers' refusal to arrest the suspect violated the plaintiff's equal protection rights, was dismissed where the equal protection rights alleged here were not clearly established at the time of the arrest.

- 29. **Estate of Moreland v. Dieter**, (7th Cir., No. 03-3734, January 14, 2005) In a wrongful death action, judgment against the defendant-deputies for violating the civil rights of an inmate was affirmed where the district court did not abuse its discretion by admitting videotaped interviews of the defendants and excluding evidence that the defendants were acquitted of criminal charges.

- 30. **Velez v. Johnson**, (7th Cir., No. 04-1943, January 13, 2005) In a section 1983 suit, alleging a police officer violated an inmate's constitutional rights by failing to respond to a request for protection, the defendant's motion for summary judgment on qualified immunity grounds was properly denied.

- 31. **Foelker v. Outagamie County**, (7th Cir., No. 04-1430, January 7, 2005) The dismissal of the plaintiff-inmate's suit, alleging a violation of his constitutional rights, was reversed where a reasonable jury could conclude that the defendant intentionally allowed the defendant to suffer from the effects of his drug withdrawal.

- + 32. **Board v. Farnham**, (7th Cir., No. 03-2628, January 5, 2005) In a suit alleging inhuman and inadequate conditions at a jail, the plaintiffs did present sufficient evidence of the alleged constitutional violations to successfully resist a grant of summary judgment to the defendants on qualified immunity grounds.

YEAR 2004

- 1. **Pierson v. Hartley**, (7th Cir., No. 02-3491, December 14, 2004) In a Section 1983 action, a judgment as a matter of law against the plaintiff-inmate suit is reversed where allowing a prisoner with a weapons conviction to live in the dormitory with the plaintiff is sufficient to demonstrate deliberate indifference under the Eighth Amendment.

+ 2. **Lawrence v. Kenosha County**, (7th Cir., No. 04-1472, December 2, 2004) The Plaintiff's complaint of an **illegal seizure and excessive force** used in his arrest was dismissed where probable cause did exist for the stop and the defendant acted within the limits of his authority.

+ 3. **Killinger v. Johnson**, (7th Cir., No. 04-1492, November 24, 2004) The Plaintiff's complaint, alleging that the closure of his bar without a hearing violated his procedural due process rights, was dismissed where the defendant/mayor enjoyed judicial immunity for his acts as the local liquor control commissioner.

O 4. **Anderer v. Jones**, (7th Cir., No. 02-3669, October 6, 2004) The Plaintiff/Police Officer's suit, alleging Fourth and First Amendment violations associated with the **termination of his employment**, was dismissed where the defendant had probable cause to arrest him and the speech issue concerning a private personal dispute that was not a matter of public concern.

+ 5. **Christopher v. Buss**, (7th Cir., No. 02-4044, September 29, 2004) The defendant/prisoner's suit, claiming that the defendant-correctional facility violated the Eighth Amendment (Cruel and Unusual Punishment) by **failing to correct a "protrusive lip" on the prison softball field** that caused him injury, was dismissed where the failure to alert was not an unnecessary and wanton infliction of pain.

+ 6. **Russell v. Richards**, (7th Cir., No. 03-3600, September 16, 2004) The defendant-jail's policy of directing incoming inmates to use a delousing shampoo did not violate the inmates' Fourteenth Amendment due process right to be free from unwanted medical treatment.

- 7. **Hall v. Bennett**, (7th Cir., No. 02-2683, August 12, 2004) Summary judgment against the plaintiff's claim of **deliberate-indifference** under the Eighth Amendment was reversed because sufficient evidence was introduced to show that the defendants knew of the risk the plaintiff was facing when he was assigned to do electrical work.

O 8. **Haywood v. City of Chicago**, (7th Cir., No. 03-3175, August 10, 2004) In an illegal possession of a firearm case, the district court's grant of summary judgment against a plaintiff's claim of **false arrest** was affirmed. However, the defendant's **continued detention** ordered by the judge was error where, under the Fourteenth Amendment, he could not be held in custody longer than 48 hours without probable cause that he committed a crime.

+ 9. **Doe v. City of LaFayette**, (7th Cir., No. 01-3624, July 30, 2004) The defendant, a convicted sex offender, unsuccessfully challenged **his ban from all public parks** in the defendant's jurisdiction on grounds that it violated his rights under the First and Fourteenth Amendments.

+ 10. **Gower v. Vercler**, (7th Cir., No. 02-4112, July 23, 2004) The district court correctly denied the defendant-plaintiff's for a directed verdict because the defendant-police officers did not **lack probable cause for his arrest** since they were responding to the plaintiff's threatening and abusive language, which violate an Illinois disorderly conduct statute.

- 11. **Lindell v. Litscher**, (7th Cir., No. 03-2651, July 19, 2004) In a civil rights case, the Court reversed summary judgment against the plaintiff for his First Amendment claim, finding that the defendant's

confiscation of picture postcards in the plaintiff's cell may have violated his free speech rights and that the case should have been allowed to proceed to the jury.

+ 12. **Riccardo v. Rausch**, (7th Cir., No. 02-1961, July 12, 2004) The Court reversed a jury's resolution for the plaintiff because it did not believe a reasonable jury could have found that the defendant-prison guard knew or deliberately disregarded the fact that his actions subjected the plaintiff to a substantial risk of serious harm.

0 13. **Hudson v. City of Chicago**, (7th Cir., No. 03-2690, July 6, 2004) The Court dismissed the plaintiff police officers' claims that they had been denied Due Process when they were terminated pursuant to the City's "absent without permission" policy.

0 14. **Carlson v. Gorecki**, (7th Cir., No. 03-1732, June 29, 2004) The District Court properly denied the defendant's request for qualified immunity, in a wrongful termination suit where the plaintiff's (investigators in a State's Attorney's Office) alleged that they were fired for engaging in protected speech.

- 15. **Hadley v. Williams**, (7th Cir., No. 03-1530, May 14, 2004) Summary judgment was improperly granted to the detective defendant in this section 1983 case. Consent to enter the plaintiff's house, procured by falsely stating that the police had a search warrant, was no consent at all. Answering a knock is not consent to enter. The police may not properly seize anything they see inside the house when the front door swings open in response to a knock.

- 16. **Kijonka v. Seitzinger**, (7th Cir., No. 03-3158, April 14, 2004) Summary judgment on the ground of qualified immunity is reversed as to a State's Attorney, who instructed an officer to arrest the plaintiff on the strength of a complaint that failed to allege any crime.

- 17. **Wiley v. City of Chicago**, (7th Cir., No. 03-1490, March 22, 2004) The plaintiff's Fourth Amendment claim for false arrest must be reinstated. Though the two-year statute of limitations in such cases normally runs from the time of the arrest, if, as alleged, the plaintiff was arrested and prosecuted solely on the basis of drugs planted by the arresting officers, his claim would not begin to accrue until the charges were dismissed.

- 18. **Manning v. Miller**, (7th Cir., No. 03-1762, January 21, 2004) The defendant FBI agents were not entitled to qualified immunity from the plaintiff's charges because, prior to the actions that gave rise to this case, it was well established that investigators who withhold exculpatory evidence from a defendant violate that defendant's constitutional due process rights.

YEAR 2003

+ 1. **Luellen v. City of E. Chicago**, (7th Cir., No. 02-3188, November 18, 2003) Summary judgment to the defendants concerning section 1983 claims was affirmed where the search of plaintiff's car did not violate the Fourth Amendment.

- 2. **Gauger v. Hendle**, (7th Cir., No. 02-3841, October 30, 2003) Summary judgment to the defendants was reversed where the plaintiff's **false-arrest** claim did not accrue until his conviction was reversed, and because the Fourth Amendment was aimed at deterring unreasonable searches and seizures, not malicious prosecutions, damages will be limited to the harm incurred from the false arrest before the plaintiff was charged.

- + 3. **Ochana v. Flores**, (7th Cir., No. 02-2227, October 17, 2003) In a section 1983 action against police officers alleging a violation of Fourth Amendment rights, the district court's decision in favor of the officers was affirmed where, (1) there was probable cause to search the vehicle for drugs, and (2) the obstruction of traffic charge gave probable cause to arrest.

- + 4. **Braun v. Baldwin**, (7th Cir., No. 02-4143, October 10, 2003) In a suit for **infringement of free speech, false arrest, and excessive use of force**, grant of summary judgment to the defendant on all counts was affirmed where (1) the regulation of speech advocating jury nullification inside a courthouse was a reasonable time, place and manner regulation, and (2) taking a picture of an officer and threatening to sue him created probable cause to effectuate an arrest in a court house setting.

- + 5. **Scott v. Edinburg**, (7th Cir., No. 02-4085, October 9, 2003) In a section 1983 action involving an off-duty police officer, the district court's grant of summary judgment was affirmed where there was a question of fact as to the reasonableness of the defendant's **use of deadly force** for self defense, but deadly force was found to be reasonable under the Fourth Amendment in order to protect third parties in danger.

- + 6. **Ross v. Austin**, (7th Cir., No. 02-3830, September 16, 2003) Summary judgment in favor of a town and its police chief was proper in the plaintiff's section 1983 substantive due process claims, alleging that a police officer's **inadequate training** resulted in the murder of her husband.

- + 7. **Knox v. Smith**, (7th Cir., No. 02-4329, August 26, 2003) A parole officer was entitled to qualified immunity in a section 1983 claim, as the officer sought an arrest warrant based on reasonable suspicion that a parole had been violated.

- 0 8. **Williams v. Seniff**, (7th Cir., No. 02-1231, August 20, 2003) An assistant police chief did not have a protected First Amendment right to make certain statements to the press, thus his claim of termination in retaliation for the exercise of protected speech must fail; plaintiff failed to produce evidence of a conspiracy to violate his federally-protected rights.

- + 9. **Stanley v. Henson**, (7th Cir., No. 02-2806, July 28, 2003) A section 1983 action arising from a pre-trial detainee's being **subjected to a jail clothing-exchange** procedure was not actionable, as the scope of the intrusion was not excessive, and the procedure was reasonably and fairly designed to promote legitimate goals of institutional security and accurate inventory.

- + 10. **McCann v. Mangialardi**, (7th Cir., No. 02-2409/3021, July 22, 2003) The plaintiff failed to show that a police officer violated his right to due process, as evidence did not show that the officer knew about drugs being planted in the plaintiff's car prior to the entry his guilty plea.

- 0 11. **Dixon v. City of New Richmond**, (7th Cir., No. 02-3727, July 2, 2003) A police department and its officials were entitled to summary judgment in a section 1983 action alleging due process violations, after a part-time officer was terminated for alleged alcoholic beverage law violations and other misconduct.
- + 12. **Martin v. Snyder**, (7th Circuit, No. 02-1135, May 23, 2003) Prison officials were entitled to qualified immunity in a 1983 action against a claim by an inmate and his wife, alleging the **unconstitutional restriction of their ability to wed**, where the warden did not preclude the marriage but only postponed it while visiting privileges were suspended.
- + 13. **Alexander v. Deangelo**, (7th Circuit, No. 02-3124, May 22, 2003) The **use of trickery** by the police in a sting operation cannot, in itself, give rise to a 1983 action for damages, but where a police officer may have induced an informant to engage in sex with a suspect, the elements of a battery committed by the fraud were present. However, in this case the police were entitled to qualified immunity.
- 14. **Carter v. Simpson**, (7th Circuit, No. 02-3978, May 13, 2003) A deputy sheriff collided with a civilian. The jury should have been allowed to determine whether the conduct of the deputy was willful and wanton.
- 15. **Jones v. Buchanan**, (7th Circuit, No. 02-2223, April 21, 2003) A deputy, charged with the use of **excessive force** against a handcuffed, secured citizen who was neither suspected of any crime nor fleeing a crime scene, was not entitled to qualified immunity as a matter of law.
- 16. **Finsel v. Cruppenink**, (7th Circuit, No. 02-2223, April 21, 2003) A county sheriff deputy was not entitled to qualified immunity in a 1983 action, as he should have known that he could not lawfully **break down a door and forcibly enter the plaintiff's hotel room** under these circumstances.
- + 17. **Bublitz v. Cottey**, (7th Circuit, No. 02-3400, April 09, 2003) Police officers' conduct in a **high speed pursuit** of a third party did not violate the Fourth or Fourteenth Amendment rights of the claimant, or those of his deceased family members.
- + 18. **Smith v. Lamz**, (7th Circuit, No. 02-2130, March 5, 2003) A **malicious prosecution** claim under Section 1983 and state law was not actionable where the facts established that probable cause existed for the plaintiff's arrest for impersonating a police officer under Illinois law.
- + 19. **Beauchamp v. City of Noblesville**, (7th Circuit, No. 02-2568, February 26, 2003) Police officers enjoyed qualified immunity from Section 1983 claims, where they had probable cause to apply for warrants to arrest the plaintiff for residential entry and rape under Indiana law. False arrest, defamation, and outrage claims were not actionable either.
- + 20. **Bell v. Irvin**, (7th Circuit, No. 02-2262, February 25, 2003) A Section 1983 claim was not actionable where the police officers **use of "beanbag" rounds** in deterring the plaintiff was not **excessive use of force** under the circumstances.

- **21. Thompson v. Wagner**, (7th Circuit, No. 02-1918, January 13, 2003) Sheriff's Department members were not entitled to summary judgment on qualified immunity grounds in a Section 1983 claim, were reasonable officers would not have believed that probable cause to arrest existed, and the arrest on an obstruction theory also failed.

YEAR 2002

+ **1. White v. City of Markham**, ____ F. 2d ____ (7th Circuit, No. 01-2034, November 11, 2002) The defendants were entitled to qualified immunity to 1983 and state claims, where at the time a police officer **directed the plaintiff to leave a house**, even if an unreasonable seizure occurred, the alleged acts were not clearly established to constitute a constitutional violation.

+ **2. Abrams v. Walker**, ____ F. 2d ____ (7th Circuit, No. 01-2447, October 10, 2002) AN attorneys' First Amendment **retaliation claim arising from his arrest** during a client's traffic stop was not actionable, because he had no constitutional right to engage in disobedient and dilatory conduct, and he was not arrested for his speech.

+ **3. Penn v. Harris**, ____ F. 2d ____ (7th Circuit, No. 01-2280, July 10, 2002) A **malicious prosecution** claim against campus police officers was not actionable where the plaintiff failed to allege the violation of a constitutional right; a state law claim for malicious prosecution would also fail.

0 **4. Jenco v. City of Chicago**, ____ F. 2d ____ (7th Circuit, Illinois, No. 01-2395, April 12, 2002) **Malicious prosecution** claims should be examined under the due process clause directly rather than under a theory of substantive due process; In this case summary judgment was affirmed against the City but reversed as to the individual officers, for a determination of their entitlement to qualified immunity.

- **5. Marshall v. Teske**, ____ F. 3d ____ (7th Circuit (Wisconsin), No. 01-2722, March 27, 2002) A young boy was **detained and arrested** even after a search had produced no evidence linking him to a crime. Upon his arrest, an officer pulled down the boy's pants and underwear and refused to let him call his parents or attorney. The jury had sufficient evidence to find that the police demonstrated a callous disregard for the defendant's constitutional rights and the award of punitive damages was appropriate.

+ **6. Muick v. Genayre Electronics**, ____ F. 3d ____ (7th Circuit (Illinois), No. 00-3299, February 6, 2002) The Corporate employer that took an employee's work computer, and eventually turned it over to law enforcement officials pursuant to a search warrant, did not take the computer under color of federal law or violate the employee's Fourth Amendment rights.

+ **7. Profitt v. Ridgway**, ____ F. 3d ____ (7th Circuit (Illinois), No. 00-3229, February 2, 2002) In a 1983 action alleging **excessive force resulting in death**, summary judgment and dismissal of this case in favor of the officer and an assisting private citizen was proper.

- **8. McNair v. Coffey**, ____ F. 3d ____ (7th Circuit (Wisconsin), No. 00-1139, January 29, 2002) Where a seizure was supported by probable cause and was otherwise reasonable, the presence of an excessive number of squad cars and drawn guns, triggered by a police officer's call for backup, cannot be said to have violated the Fourth Amendment by giving fright or offense.